

## **CHAPTER 5**

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## **ARTICLE 5-4**

### **Business Licenses**

#### **Sec. 5-4-10. Application fee.**

(a) All applications for business licenses governed by this Article, excluding contractor licenses, and provided for in Article 15-16 and licenses provided for in Articles 5-12 through 5-68 shall be made to the City Clerk in written form and shall be accompanied by the requisite license fee provided for said business licenses in this Code. Except as provided in this Article, the initial application shall also be accompanied by an application fee in an amount as set by resolution of the City Council, which shall remain in effect until such resolution is amended by action of the City Council. Contractor licenses shall be applied for and issued by the Building Department. Payment for contractor licenses shall be made to the Building Department Permit Technician.

(b) It is expressly provided that this Section shall not apply to the application fee relative to applications for the sale of alcoholic beverages and fermented malt beverages which are governed by the provisions of Article 3-24, nor to the application fees for those business licenses of the construction industry which are governed by Article 15-16. (Ord. 991 §1, 1979; Ord. 1435 §1, 1993; Ord. 1723 §1, 2001)

#### **Sec. 5-4-20. City Clerk to keep records.**

The City Clerk shall maintain a file of all applications for licenses other than contractor licenses according to the type of license applied for in accordance with the law of keeping of public records. (Prior code §5-108; Ord. 841 §1(part), 1975; Ord. 1723 §1, 2001)

#### **Sec. 5-4-30. Fee payment and compliance required.**

No business license shall be issued unless the requisite license fee and the initial application fee are paid in advance to the City Clerk. Furthermore, the City Clerk shall not issue any license pursuant to this Chapter whenever the public health, safety and welfare of the citizens of the City shall require that the license shall not be issued. (Ord. 992 §1, 1979)

#### **Sec. 5-4-40. Fees refunded on application denial.**

In the event an application for a business license pursuant to the provisions of this Article is denied, the license fee shall be returned forthwith to the proposed licensee; provided, however, this Section shall not apply to the initial application fee. (Prior code §5-103; Ord. 841 §1(part), 1975)

#### **Sec. 5-4-50. License requirements.**

Every business license issued pursuant to the this Article and Articles 5-8 through 5-68 shall be signed by the City Clerk and shall have the seal of the City affixed thereto. It shall be dated as of the date of issuance and shall set forth the purpose of the license and the length of time for which the license is valid. (Prior code §5-104; Ord. 841 §1(part), 1975)



**Sec. 5-4-60. Term, suspension or revocation.**

No business license shall be granted pursuant to this Article for a period of longer than one (1) year and the City Council shall have the right to suspend or revoke any business license issued to any person pursuant to this Article whenever the holder thereof violates any ordinance or statute or whenever in the judgment of the City Council the public health, safety and welfare shall require that the same shall be suspended or revoked. (Prior code §5-105; Ord. 841 §1(part), 1975)

**Sec. 5-4-70. Fees not refundable.**

In case any license issued pursuant to this Article shall be suspended or revoked, no refund shall be made of the license fee or application fee or any portion thereof. (Prior code §5-106; Ord. 841 §1(part), 1975)

**Sec. 5-4-80. Nonassignability.**

No business license issued pursuant to this Article shall be assignable nor shall any business license authorize any person to do business or to act pursuant to such license other than the person to whom such license is issued. (Prior code §5-107; Ord. 841 §1(part), 1975)

**ARTICLE 5-8**

**Alcoholic Beverages**

**Sec. 5-8-10. Definitions.**

As used in this Article, the following words and phrases shall have the meanings ascribed to them as follows:

(1) *Fermented malt beverage* means any beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any similar product or any combination thereof in water containing not more than three and two-tenths percent (3.2%) alcohol by weight or four percent (4%) alcohol by volume.

(2) Except in Subsection 5-9-20(b), *licensee* includes any person duly licensed to sell liquor or fermented malt beverages in the City or any agent, servant or employee of such licensee.

(3) *Liquor* means liquor as defined in the Colorado Liquor Code and includes all alcoholic beverages or spirits except 3.2 beer, the sale of which is capable of being licensed by the City.

(4) *Premises* includes all or any part of the physical boundaries of any establishment duly licensed for the sale of liquor or fermented malt beverage in the City. (Prior code §7-601; Ord. 1723 §2, 2001)

**Sec. 5-8-20. Licensee's duty to report violations.**

(a) It shall be the duty of the licensee and those agents or employees of the licensee on duty on the premises to immediately report to the Police Department any act or acts that constitute a violation of law of the City or State, committed on the premises of the licensee.

(b) It shall not be a defense to a violation of this Section that the licensee was not personally present on the premises at the time such violation of law occurred, if the licensee had reasonable opportunity to report such violation of law after learning of such violation. However, any agent, servant or employee of the licensee shall not be responsible hereunder when absent from the premises and not on duty on the premises at the time such violation occurred on the premises. (Prior code §§7-602, 7-605; Ord. 879 §1(part), 1976)

**Sec. 5-8-30. Licensee's duty to post sign.**

Each licensee shall post and keep at all times visible to the public, in a conspicuous place on the premises, a sign to be furnished by the City Clerk's office, which sign shall be in the following form: "WARNING: Brighton Police Department must be notified of all disturbances in this establishment. Brighton Ordinances make it mandatory that all liquor and fermented malt beverage establishments comply with this requirement." (Prior code §7-603; Ord. 879 §2, 1976)

**ARTICLE 5-12**

**Amusement Devices**

**Sec. 5-12-10. Definitions.**

The following words and phrases as used in this Article unless the context otherwise indicates, shall be construed as defined in this Section:

(1) *Jukebox* means any music-vending machine, contrivance or device which, upon the insertion of a coin, slug, token, plate, disc or key into any slot, crevice or other opening, or by the payment of any price, operates or may be operated for the emission of songs, music or similar amusement.

(2) *Mechanical amusement device* means any machine which, upon the insertion of a coin, slug, token, plate or disc, may be operated by the public generally for use as a game, entertainment or amusement, whether or not registering a score. It shall include such devices as marble machines, pinball machines, skill ball, mechanical grab machines and all games, operations or transactions similar thereto under whatever name they may be indicated.

(3) *Person*, as used in this Article, includes the following: any person, firm, corporation or association which owns any such machine; provided, however, that the payment of such fee by any person, firm, corporation or association enumerated in this Article shall be deemed a compliance with this Article. (Prior code §5-621)

**Sec. 5-12-20. License required; application and fee.**

Any person displaying for public patronage or keeping for operation any jukebox or mechanical amusement device, as defined by Section 5-12-10, shall be required to obtain a license from the City, upon payment of a license fee. Application for such license shall be made to the City Clerk upon a form to be supplied by the City Clerk for that purpose. (Prior code §5-623)

**Sec. 5-12-30. Age requirement.**

No license shall be issued pursuant to the provisions of this Article to any applicant unless he or she has attained the age of twenty-one (21) years. (Prior code §5-631; Ord. 845 §5, 1975; Ord. 1589, 1999)

**Sec. 5-12-40. Contents of application.**

The application for such license shall contain the following information:

- (1) The applicant's name, address, age, date and place of birth;
- (2) Prior convictions of the applicant, if any;
- (3) Place where the machine or device is to be displayed or operated and the business conducted at that place;
- (4) Description of the machine to be covered by the license, specifically including the mechanical features of the machine. (Prior code §5-624; Ord. 845 §1, 1975; Ord. 1589, 1999)

**Sec. 5-12-50. Investigation; approval.**

(a) The application for the license shall be made out in duplicate, one (1) copy being referred to the Chief of Police and the other copy to the Electrical Inspector.

(b) The Chief of Police shall investigate the location wherein it is proposed to operate such machine, ascertain if the applicant is a person of good moral character and either approve or disapprove the application.

(c) The Electrical Inspector shall inspect all wiring and connections to the machine, determine if the same complies with the electrical code of the City, and shall either approve or disapprove the application.

(d) No license shall be issued to any applicant unless approved by the Chief of Police and the Electrical Inspector. (Prior code §5-625)

**Sec. 5-12-55. Action upon application.**

(a) Except as hereinafter provided, the City Clerk shall place all applications for new licenses provided for in this Article before the City Council for consideration at a duly convened Council meeting, and the City Council shall act upon such application within thirty (30) days after such application is filed with the City Clerk.

(b) Those applications for new licenses pursuant to this Article for premises for the conduct or operation of no more than two (2) machines, including jukeboxes and/or mechanical amusement devices as defined in Section 5-12-10, shall be acted upon by the City Clerk within thirty (30) days after such application is filed with the City Clerk.

(c) Upon receipt of an application for renewal of any license issued pursuant to this Article, the City Clerk shall make inquiry as to whether the applicant for renewal of the license has violated any of

the provisions of this Article or has allowed the licensed premises to become a public nuisance or in any manner injurious to the public health, safety or welfare. If the City Clerk determines that no reasonable basis exists for denial of the application for renewal of the license, the City Clerk shall renew the license. In the event that the City Clerk determines that reasonable grounds exist for denial of the application for renewal of the license, the application shall be placed before the City Council for consideration at a duly convened Council meeting upon notice to the applicant and public hearing to be held within thirty (30) days after such application is filed with the City Clerk.

(d) In rendering a decision on any application pursuant to this Article, the City Council or the City Clerk, as applicable, shall consider the following:

- (1) The character of the applicant;
- (2) The proposed method of operation of the contemplated business, including but not limited to the number of persons to be employed, the hours of operation, the character of the persons to be employed, the abilities of the persons to be employed and the size of the proposed business operation;
- (3) The location of the proposed business;
- (4) The desires of the inhabitants and the operators of the other businesses in the general area of the proposed business;
- (5) The zoning on the subject premises;
- (6) The means of ingress and egress to the proposed business, as well as the public improvements, including sidewalks, drainage and public right-of-way servicing the subject premises;
- (7) Any other factors which are relative to the effect on the health, safety and general welfare of the citizens of the City.

(e) If the applicant for a license pursuant to this Article is denied by the City Council or the City Clerk, as the case may be, the fee paid with the application shall be refunded to the applicant. (Ord. 1118 §1, 1982)

#### **Sec. 5-12-60. License fee required.**

Each applicant for a license pursuant to this Article shall, before being granted a license, pay an annual license fee for the privilege of operating or maintaining for operation each jukebox or mechanical amusement device as defined in this Article, and a fee per each machine on the premises for any portion of the period for which the license is issued pursuant to this Article. Such fee shall be set by resolution of the City Council, which shall remain in effect until such resolution is amended by action of the City Council. (Prior code §5-626; Ord. 845 §2, 1975; Ord. 1435 §2, 1993; Ord. 1589, 1999; Ord. 1723 §3, 2001)

#### **Sec. 5-12-70. Expiration of license.**

Each license issued pursuant to the provisions of this Article shall expire at 12:00 midnight on December 31 of the year for which the license is issued. (Prior code §5-633; Ord. 845 §7, 1975)

**Sec. 5-12-80. Display of license required.**

The license provided for in this Article shall be posted permanently and conspicuously at the location of the machine, in the premises wherein the device is to be operated or maintained to be operated. (Prior code §5-627; Ord. 845 §3, 1975; Ord. 1589, 1999)

**Sec. 5-12-90. Hours of jukebox operation.**

No person holding a license under this Article shall permit the playing of jukeboxes, as defined in Section 5-12-10, between the hours of 2:00 a.m. and 6:00 a.m. of any day. (Prior code §5-628)

**Sec. 5-12-100. Gambling devices prohibited.**

Nothing in this Article shall in any way be construed to authorize, license or permit any gambling devices whatsoever, or any mechanism that has been judicially determined to be a gambling device or in any way contrary to law, or that may be contrary to any future laws of the State. (Prior code §5-622)

**Sec. 5-12-110. Seizure and destruction of amusement devices.**

If the Chief of Police has reason to believe any mechanical amusement device is used as a gambling device, such machine may be seized by the police and impounded, and if upon trial of the exhibitor for allowing it to be used as a gambling device the exhibitor be found guilty, such machine shall be destroyed by the police. (Prior code §5-630)

**Sec. 5-12-120. Suspension or revocation of license.**

Each license issued pursuant to this Article shall be subject to revocation or suspension by the City Council after notice and hearing, if such licensee is found to conduct his or her business in a manner which violates any ordinance of the City or the laws of the State, or in a manner which constitutes a breach of the peace or is a menace to the health, safety or general welfare of the public. (Prior code §5-629; Ord. 845 §4, 1975)

**Sec. 5-12-130. Exemptions.**

No charitable, religious, patriotic, philanthropic or nonprofit corporation shall be required to comply with the provisions of this Article. (Prior code §5-632; Ord. 845 §6, 1975)

**ARTICLE 5-16**

**Auctioneers**

**Sec. 5-16-10. License required.**

No person shall sell any property at public auction within the City without first having obtained a license therefor pursuant to the provisions of this Article. (Prior code §5-201; Ord. 854 §1(part), 1975)

**Sec. 5-16-20. License fees.**

(a) In order to sell at public auction in the City, any person maintaining an auction room or place of regular business for auction within the City shall pay to the City Clerk, at the time application is made for the license, a fee in an amount to be set by resolution of the City Council.

(b) In order for any person, other than a person maintaining an auction room or place of regular business for auction within the City, to sell at public auction in the City, such person shall pay to the City Clerk, at the time application is made for the license, a fee in an amount to be set by resolution of the City Council. (Prior code §5-202; Ord. 854 §1(part), 1975; Ord. 1435 §3, 1993)

**Sec. 5-16-30. Expiration of license.**

Each license issued pursuant to this Article shall expire at 12:00 midnight on December 31 of the year for which the license is issued, notwithstanding any provision to the contrary contained in this Article. (Prior code §5-203; Ord. 854 §2(part), 1975)

**Sec. 5-16-40. Exceptions to applicability.**

No provision of this Article shall be considered as applicable to sales made at public auction under or by virtue of any legal proceeding or process through or from a court of law; to sales under any mortgage or deed of trust; to any tax sales; or to sales under any ordinance of the City by any municipal officer. (Prior code §5-204; Ord. 854 §2(part), 1975)

**ARTICLE 5-24**

**Cabarets**

**Sec. 5-24-10. Cabaret defined.**

A *cabaret* means a cafe, restaurant or tavern where patrons are entertained by performers who dance, sing or have vaudeville acts for the entertainment of patrons within the corporate limits of the City. (Prior code §5-640; Ord. 868 §1(part), 1976)

**Sec. 5-24-20. License required.**

No person shall operate or maintain or permit the operation or maintenance of a cabaret within the City without first obtaining a license therefor pursuant to the provisions of this Article. (Prior code §5-641; Ord. 868 §1(part), 1976)

**Sec. 5-24-30. License fee; term.**

Upon application for a license pursuant to the provisions of this Article, there shall be paid to the City Clerk a fee in an amount to be set by resolution of the City Council, which shall remain in effect until such resolution is amended by action of the City Council. (Prior code §5-642; Ord. 868 §1(part), 1976; Ord. 1435 §5, 1993)

**Sec. 5-24-40. Nontransferability of license.**

Each license issued pursuant to the provisions of this Article shall be for a particular place or premises as described in the application and in the license and shall not be transferable to a different place or premises. (Prior code §5-643; Ord. 868 §1(part), 1976)

**Sec. 5-24-50. Expiration of license.**

Each license issued pursuant to the provisions of this Article shall expire at 12:00 midnight on December 31 of the year for which the license is issued. (Prior code §5-644; Ord. 868 §1(part), 1976)

**ARTICLE 5-28**

**Cable Television System**

**Sec. 5-28-10. Defined.**

As used in this Article, *cable television system*, *community antenna television system*, sometimes called *CATV system* or *CATV*, means any facility which, in whole or in part, receives directly over the air and amplifies or otherwise modifies the signals transmitting programs broadcast by one (1) or more television stations and distributes such signals by wire or cable to subscribing members of the public who pay for such service; however, such term shall not include any facility which serves only the residents of one (1) or more apartment dwellings under common ownership, control or management and commercial establishments located on the premises of such an apartment house. (Ord. 578 §1(part), 1968)

**Sec. 5-28-20. License required.**

A nonexclusive license or permit to install, operate and maintain a cable television system within all or any portion of the City shall first be obtained from the City Council before any person commences to operate and continues to operate a cable television system within the City. Such permit shall be obtained under and pursuant to the terms and provisions of this Article. (Ord. 578 §1(part), 1968)

**Sec. 5-28-30. Contents of application.**

Any person desiring a permit for a CATV system in the City shall file a written application with the City Clerk setting forth among other things a statement showing the financial condition, responsibility and resources of the applicant, the experience of the applicant in the CATV field and similar business, the ability of the applicant to furnish efficient and dependable service to the public and potential users of CATV in the City, the channels or program coverage of service of the applicant, with any particular features thereof and other pertinent information bearing upon the quality, scope and type of service. The applicant shall also state the percentage of its gross revenue which it will pay the City each month. (Ord. 578 §15, 1968)

**Sec. 5-28-40. Rights granted to permittee designated.**

Any permittee granted a license shall have the right, permission and authority to construct, operate and maintain all facilities necessary or appropriate for its cable system or the transmission of signals

by wire under the streets, avenues, alleys, public rights-of-way, easements for the public or utilities and other City property now or hereafter existing. (Ord. 578 §15, 1968)

**Sec. 5-28-50. Rights granted to permittee nonexclusive.**

The right to use and occupy the streets, alleys and other public ways of the City for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use in the streets and alleys to any other person or persons. As stated, all facilities shall be constructed underground and such construction shall refer to and not conflict or interfere with any existing utilities, their maintenance and repair. The permittee shall be obligated to protect its facilities at all times. (Ord. 578 §5, 1968)

**Sec. 5-28-60. Application conditions, contents.**

Any permit granted under this Article shall be on a form provided by the City, and the same shall contain such terms, provisions and conditions as the City Council may determine. The form may be modified, amended and changed by the City Council as it deems proper. No vested rights shall accrue to any permittee by virtue that the permittee holds a permit so as to prevent any subsequent modifications, amendments and changes, such right being reserved to the City. (Ord. 578 §17, 1968)

**Sec. 5-28-70. Transferability of license; approval required.**

The permit or privileges provided for in this Article shall be personal to the permittee and they cannot be sold, transferred, leased, assigned and disposed of, in whole or part, either by voluntary or involuntary proceedings, without the consent of the City expressed by resolution of the City Council upon such conditions as it may prescribe, except such consent shall not be unreasonably withheld. (Ord. 578 §13, 1968)

**Sec. 5-28-80. Bond requirements.**

Each permittee shall file with the City Clerk a bond in the sum of ten thousand dollars (\$10,000.00) to be executed by the permittee, with good and sufficient surety, running to and in favor of the City, and conditioned as follows:

- (1) The full and faithful performance of all the terms and conditions of the license or permit by the permittee;
- (2) That the permittee shall faithfully and simultaneously with construction, installation, repair and maintenance and upon termination or revocation restore the streets, rights-of-way, alleys and easements of the City to their prior condition; and
- (3) That the City shall be saved harmless from any damage arising out of the exercise by the permittee, its successors and assigns, of the rights conferred by this Article. Upon the filing of such bond, the license or permit shall be in full force and effect. (Ord. 578 §16, 1968)

**Sec. 5-28-90. Liability of permittee; insurance.**

The permittee shall, at its own expense, defend all suits that may be brought against the City on account of the CATV business of the permittee or the construction or operation of its system and infringement of copyrights, patents or like violations, and shall keep the City harmless from any and all



damages, claims, judgments, costs and expenses of every kind growing out of or connected with the business and installation or operation of the system. The permittee, as further assurance to the City shall, during the existence of the permit granted the permittee under this Article, furnish the City with proper evidence of liability insurance coverage with an approved company, insuring both the permittee and the City against claims, demands or losses for injury to persons or damage to property resulting from or connected with the construction, operation or maintenance of the system and business within the City. Such insurance shall have limitations in not less than one hundred thousand dollars (\$100,000.00) for injury to one (1) person in one (1) occurrence, not less than three hundred thousand dollars (\$300,000.00) for injury to more than one (1) person in the same occurrence, and not less than one hundred thousand dollars (\$100,000.00) for damage to property in one (1) occurrence. (Ord. 578 §14, 1968; Ord. 1589, 1999)

**Sec. 5-28-100. Gross subscription receipts defined.**

As used in Sections 5-28-110 through 5-28-140, *gross subscription receipts* means the amount received by the permittee from the sale of its services within the City, less the amounts collected for the connection, termination, reconnection or installation of lines or equipment necessary to commence rendering service to any customer. (Ord. 585 §1(part), 1968)

**Sec. 5-28-110. Fee; statement; right of inspection.**

The permittee shall pay to the City quarterly, as a permit fee, a sum equal to not less than five percent (5%) of its gross revenue and receipts derived from the conduct of its business within the corporate limits of the City. Within thirty (30) days after the end of each calendar year, the permittee shall file with the City a gross financial statement, prepared and certified by a certified public accountant, showing in detail the total gross receipts for the preceding calendar year; and shall simultaneously, with the filing of such statement, pay any unpaid balance for such year. The City shall have the right to inspect the permittee's books and records in order to verify the amount reported. (Ord. 585 §1(part), 1968)

**Sec. 5-28-120. Percentage paid by all permittees to be equal.**

Each permittee shall pay the same percentage of revenue and receipts to the City. In the event the City grants to a permittee offering substantially identical services in the City, a permit calling for a greater percentage of revenue and receipts than provided for in permits granted earlier by the City; or in the event that any grantee, licensee or permittee is granted a license, permit or other type of authorization, however designated, of a similar nature, to construct, operate and maintain a cable television system, offering substantially identical services, in any of the Counties of Adams, Jefferson, Arapahoe, or any city located therein or any portion thereof, or in the City and County of Denver, which provides for greater percentage of gross subscription receipts than that being paid to the City, then the City may, by written notice delivered to all permittees of this City, elect to be paid, in lieu of the permit fee then existing, a like fee so that the City shall receive and all permittees of this City shall pay a percentage equal to that paid by the permittee of the City paying the highest percentage or equal to that paid to the counties of Adams, Jefferson or Arapahoe, or to any city therein a portion thereof, or to the City and County of Denver, by any licensee, permittee or grantee of any such governmental unit, whichever is higher. (Ord. 585 §1(part), 1968)

**Sec. 5-28-130. Minimum percentage as fee.**

No permittee shall pay less than the percentage designated in this Article nor less than the percentage designated in the revocable permit issued by this City, whichever is higher, and all permittees shall pay the same percentage at all times to the City; nor shall any permittee pay a lower rate of return, after notice of election by the City, than any licensee, grantee or permittee, however designated, of the Counties of Adams, Arapahoe, Jefferson, or any city therein or portion thereof, or of the City and County of Denver, pays to such governmental units. Upon election by the City as provided in Section 5-28-120, all permit fees shall automatically be adjusted as of the date of election, and all permittees of this City shall pay the adjusted fee. (Ord. 585 §1(part), 1968; Ord. 1589, 1999)

**Sec. 5-28-140. Method of fee payment; fund deposit.**

Any and all fees and revenues received under this Article shall be paid to the City Treasurer, who shall deposit the same in the capital improvement fund of the City, and the same shall not be used for any other purpose. (Ord. 585 §1(part), 1968)

**Sec. 5-28-150. Charges for service; approval required.**

The charges made by the permittee for its services, including installation, repair, removal and monthly service charges, shall be according to maximum rates as established by the permittee and approved by the concurring vote of three-fourths ( $\frac{3}{4}$ ) of the elected members of the City Council. No such rate or charge shall be increased above the maximum approved without reapproval by the City Council, three-fourths ( $\frac{3}{4}$ ) of the elected members concurring in such rate or charge increase. (Ord. 578 §10, 1968)

**Sec. 5-28-160. Standards of service required.**

The system operated by the permittee shall deliver satisfactory television signals from such television stations as the City Council and the permittee may agree upon at the time the permit is granted. The system shall be installed and maintained in accordance with the highest and best accepted standards of the industry available and in compliance with such standards as the City Council may determine and require from time to time. (Ord. 578 §12, 1968)

**Sec. 5-28-170. Standards and regulations; compliance required.**

The installation, construction, operation and maintenance of the CATV system and the conduct of its business shall comply with all current federal, state and City laws, regulations and ordinances applicable thereto, and all laws, ordinances and regulations hereafter passed or adopted. (Ord. 578 §11, 1968)

**Sec. 5-28-180. Restrictions on aboveground facilities.**

(a) In the event any facilities, poles or towers are required to be erected aboveground, the same shall be erected so as not to interfere with the traffic over the streets and alleys, and the locations of all poles, towers or other structures on public property shall be placed with prior written approval and under the supervision of the City as to such location, giving consideration to the reasonable operation of the same; further, such location on public property shall not be a vested interest, and the same shall be removed by the permittee whenever, in the sole determination of the City, the same restricts or obstructs the operation or location of the streets, alleys or public places, or municipal or franchised

utilities located therein. Any and all relocation of the system reasonably requested by the City shall be at the expense of the permittee.

(b) Any and all streets and sidewalks disturbed or damaged in the construction or maintenance of such cables, lines and other appurtenances shall be promptly repaired by the permittee, at its expense, and to the satisfaction of the City.

(c) The permittee shall be subject to all ordinances now in force or that may hereafter be enacted, relative to the use of the streets, alleys, sidewalks and public ways and places of the City. All construction of the permittee shall comply with all existing and future ordinances and regulations of the City. (Ord. 578 §6, 1968; Ord. 1589, 1999)

**Sec. 5-28-190. Construction requirements for underground facilities.**

All construction of the permittee shall be underground and shall comply with all existing and future ordinances and regulations of the City. The construction, operation and maintenance of the permittee's transmission and distribution system shall be carried out in a manner which will not unnecessarily hinder or obstruct the free use of the streets or endanger persons or property. The permittee shall, at its own expense, modify its transmission and distribution system when necessary to avoid such hindrance, obstruction or danger. All construction shall be performed so as to create the least damage to the City streets, alleys, rights-of-way and easements pursuant to requirements and specifications as prepared by the City Manager. Complete restoration of all streets, rights-of-way, alleys and easements shall be made contemporaneously with installation or maintenance so as to leave them in as good condition as they were prior to installation or maintenance; and to this end the bond of the permittee shall be so conditioned. (Ord. 578 §3, 1968)

**Sec. 5-28-200. Activities prohibited, designated.**

The permittee shall not engage in the business of renting, repairing, selling or installing television sets, radios, antennas or other electronic devices for the reception of electronic signals except those required by its system. (Ord. 578 §8, 1968)

**Sec. 5-28-210. Pay TV prohibited.**

Nothing in this Article or permit granted in this Article shall be construed to authorize services known as *pay TV*; that is, the sale of programs on a program-by-program basis. (Ord. 578 §9, 1968)

**Sec. 5-28-220. Termination or revocation of license.**

The right, permit and privilege granted in this Article is subject to revocation by the City Council at its pleasure at any time. In the event of revocation, termination or expiration of this permit, the permittee shall, at its own expense and within one (1) year from the date of notice of revocation, remove any poles, wires, cables and related appurtenances that have been installed and erected, and shall leave the streets, alleys and public ways and places in as good condition as they were prior to such installation. To this end, the permittee shall post a performance bond, and the same shall be so conditioned as provided herein. (Ord. 578 §4, 1968)

## **ARTICLE 5-32**

### **Circuses and Carnivals**

#### **Sec. 5-32-10. Definitions.**

As used in this Article, the following words shall have the meanings ascribed to them as follows:

(1) *Carnival* means a traveling, commercial entertainment with organized programs of sideshows, rides, games, contests and similar activities, exhibitions and festivities.

(2) *Circus* means an assemblage of entertainment acts to which the public is invited and which includes a show of acrobats, trained animals, clowns and similar exhibitions and performances often enclosed in a tent or building and being of a transient nature.

(3) *Menagerie* means a traveling collection or exhibition of animals, monsters or freaks of nature as well as wax or other figures, paintings or artificial curiosities and other similar types of shows and exhibitions usually kept in cases or enclosures for view by the public. (Prior code §5-402; Ord. 855 §1(part), 1975)

#### **Sec. 5-32-20. License required.**

No person shall cause or permit the operation or maintenance of a circus, carnival, menagerie or similar exhibition within the City without having first obtained a license therefor and having complied with the provisions of this Article. (Prior code §5-401; Ord. 855 §1(part), 1975)

#### **Sec. 5-32-30. Inspection; issuance.**

Before issuance of any license required by this Article, the application shall be referred to the Fire Chief for his or her review and instruction of the applicant as to compliance with the public safety code of the City. Upon approval of the Fire Chief and compliance with the requirements of this Article, the Director of Finance shall issue a license to the applicant. (Prior code §5-404; Ord. 855 §1(part), 1975; Ord. 1589, 1999)

#### **Sec. 5-32-40. License fee.**

The license fee to be charged to operate a circus, carnival, menagerie or similar exhibition shall be set by resolution of the City Council, which shall remain in effect until such resolution is amended by action of the City Council. (Prior code §5-403(1); Ord. 855 §1(part), 1975; Ord. 1435 §6, 1993)

#### **Sec. 5-32-50. Deposit required.**

No license shall be issued pursuant to this Article until the applicant has provided to the City Clerk a deposit in addition to the license fee provided for in Section 5-32-40 above. The amount of this deposit shall be set by resolution of the City Council. The deposit required in this Section shall be returned to the applicant after completion of its business operation upon presentation to the City Clerk of a written statement from the Protective Safety Inspection Division stating that the area occupied by the business of the applicant has been cleared of all trash, rubbish and debris resulting from the use of the area by the applicant. (Prior code §5-403(2); Ord. 855 §1(part), 1975; Ord. 1435 §6, 1993)

## ARTICLE 5-36

### Merchant Guards and Patrols and Industrial Guards

#### Sec. 5-36-10. Definitions.

The following words and phrases, when used in this Article, shall have the following meanings, unless the context clearly indicates a different meaning.

(1) *Agents and employees* means all persons employed as a merchant guard or merchant patrol, in the conduct of such business within the City except stenographic and clerical duties in the business office of the merchant guard or merchant patrol or other employees not directly engaged in protecting and preserving the peace.

(2) *Business or industrial guard* means an individual other than a member of a governmental police or sheriff's department who accepts employment from a single employer within the City for the purpose of watching, guarding or otherwise protecting the persons or property of that employer only, or preserving the peace in the conduct of that employer's business within the City, excepting any individual so employed by any common carrier engaged in interstate commerce.

(3) *Merchant guard or merchant patrol* means any person other than a member of a governmental police or sheriff's department or a business or industrial guard as hereinafter defined, who is engaged in the business of providing protection to persons and property within the City or preserving the peace in the conduct of any business within the City.

(4) *Person* means and includes association, club, society, firm, partnership, corporation and bodies politic as well as a natural born individual. (Prior code §5-C701; Ord. 742 §1(part), 1973; Ord. 896 §1(part), 1976; Ord. 1589, 1999)

#### Sec. 5-36-20. License required.

(a) It is unlawful for any merchant guard or merchant patrol to employ any agent or employee within the City or for any employer to employ a business or industrial guard within the City, unless the person to be so employed has obtained a license issued by the City Clerk on behalf of the City as provided in this Article.

(b) It is unlawful for any agent or employee of a merchant guard or patrol or for any business or industrial guard to be so employed within the City unless such person has obtained a license issued by the City Clerk on behalf of the City as provided in this Article. (Prior code §5-C702; Ord. 742 §1(part), 1973; Ord. 896 §1(part), 1976; Ord. 1589, 1999)

#### Sec. 5-36-30. License application, contents.

Applicants for a license as a merchant guard or merchant patrol, or business or industrial guard, shall file an application with the City Clerk on forms to be provided by him or her for that purpose, which shall contain the following:

(1) If an applicant for a license as an agent or employee of a merchant guard or merchant patrol, or as a business or industrial guard: The name of the person by whom the applicant is to be employed, the address where the applicant is to be employed; the nature of the services to be

rendered; the purpose of the employment; and any other pertinent facts required. In addition, the City Clerk shall require evidence that the applicant will be employed by a merchant guard, merchant patrol or other employer in the event the application is approved;

(2) A statement as to whether or not the applicant has been convicted of any felony, misdemeanor or ordinance violation (other than traffic violations), the nature of the offense, the penalty or punishment imposed and the date and place where such offense occurred;

(3) A statement as to the business or employment record of the applicant for the two (2) years immediately preceding the date of application;

(4) Proof of good character of the applicant; and

(5) Proof of bond hereinafter required in Section 5-36-130 of this Article. (Prior code §5-C703; Ord. 742 §1(part), 1973; Ord. 896 §1(part), 1976; Ord. 1589, 1999)

**Sec. 5-36-40. Application fee for license.**

All applications for licenses issued pursuant to this Article shall be accompanied by an application fee in an amount to be set by resolution of the City Council, which shall remain in effect until such resolution is amended by action of the City Council. (Ord. 1307 §1, 1988)

**Sec. 5-36-50. Duration of license and license fees.**

(a) Each license issued pursuant to this Article shall expire at midnight of December 31 of the year of issuance.

(b) The annual license fee for any license issued pursuant to this Article shall be in an amount to be set by resolution of the City Council, which shall remain in effect until such resolution is amended by action of the City Council. (Ord. 1307 §2, 1988)

**Sec. 5-36-60. License not required when.**

In the event of an unforeseen occurrence making it necessary for personnel not licensed under this Article to perform duties which otherwise require a license hereunder, the Chief of Police shall be notified. In such event, authorization may be given by the Chief of Police for such personnel to perform duties within the City without obtaining a license therefor for a period not in excess of three (3) consecutive days. (Prior code §5-C706; Ord. 742 §1(part), 1973; Ord. 896 §1(part), 1976)

**Sec. 5-36-70. License not issued to certain persons.**

No license shall be issued to any of the following persons:

(1) Any person under eighteen (18) years of age;

(2) Any person who has a record of bad character, reputation or sobriety;

(3) Any person convicted of a felony, or other offense involving moral turpitude within five (5) years immediately preceding the date of application;

(4) Any person who has a history of drug addiction or a history of violent acts against persons or property;

(5) Any person who is unable to prove that he or she will be employed as a business or industrial guard, or as a merchant guard or merchant patrol upon issuance of the license; or

(6) Any person whose physical or mental condition is such as to warrant concern that he or she will be unfit for the service to be rendered. (Prior code §5-C707; Ord. 742 §1(part), 1973; Ord. 896 §1(part), 1976)

**Sec. 5-36-80. Identification card issued.**

In addition to the license provided for in this Article, the Chief of Police may issue to each licensee an identification card which should include the following, if issued:

(1) The type of license and expiration date thereof;

(2) Name, address and physical description of the licensee;

(3) The name of the employer, if the licensee is a business or industrial guard or agent or employee of a merchant guard or merchant patrol;

(4) The signature of the licensee and that of the Chief of Police;

(5) A statement as to whether or not the licensee is authorized to carry a firearm; and

(6) Such other information as the Chief of Police may deem advisable. (Prior code §5-C708(a); Ord. 742 §1(part), 1973; Ord. 896 §1(part), 1976)

**Sec. 5-36-90. Badge and insignia; approval authority.**

The Chief of Police is authorized to approve the use of badges and insignia used by merchant guards or merchant patrols, or business or industrial guards, but such badges or insignia should not be a colorable imitation of, or resemble in a confusing manner, the badges and insignia worn by officers of the Brighton Police Department, the Adams County Sheriff's Department or the Colorado State Patrol. (Prior code §5-C708(b); Ord. 742 §1(part), 1973; Ord. 896 §1(part), 1976)

**Sec. 5-36-100. Uniform approval required; authority.**

Uniforms, if any, worn by business or industrial guards, merchant guards or merchant patrols, while employed within the City, shall be presented to the Chief of Police for his or her approval prior to issuance to merchant guards or merchant patrols, or business or industrial guards. Once this approval is obtained, the uniforms shall not thereafter be changed except by mutual agreement between the Chief of Police and the licensee. (Prior code §5-C708(c); Ord. 742 §1(part), 1973; Ord. 896 §1(part), 1976)

**Sec. 5-36-110. Vehicle equipment and insignia restrictions.**

Vehicles used within the City by any licensee shall not be equipped with any lights or sirens in violation of the traffic code of the City or the Colorado Department of Transportation, nor shall insignias be painted thereon which say "police," "policeman," "officer of the law," "sheriff," "deputy"

or "state patrol." (Prior code §5-C708(d); Ord. 742 §1(part), 1973; Ord. 896 §1(part), 1976; Ord. 1589, 1999)

**Sec. 5-36-120. Advertising restrictions.**

The words *police*, *policeman*, *officer of the law*, *sheriff*, *deputy* or *state patrol* shall not be used in any advertising or upon the premises or equipment of any licensee within the limits of the City. (Prior code §5-C708(e); Ord. 742 §1(part), 1973; Ord. 896 §1(part), 1976; Ord. 1589, 1999)

**Sec. 5-36-130. Bond required.**

Any person licensed pursuant to this Article shall furnish to the City Clerk a good and sufficient bond conditioned upon compliance with the laws of the City and the State, in an amount to be set by resolution of the City Council, which shall remain in effect until such resolution is amended by action of the City Council. (Prior code §5-B712; Ord. 742 §1(part), 1973; Ord. 896 §1(part), 1976; Ord. 1435 §7, 1993)

**Sec. 5-36-140. Firearm restrictions.**

(a) Licensees shall have the right to carry firearms only if specifically authorized by the Chief of Police who will grant such authorization by special permit only when, in his or her opinion, the duties to be performed and services to be rendered by the licensee require that a firearm be carried for the protection of the licensee, and only when the Chief of Police is satisfied that the licensee is proficient in the care, maintenance and use of firearms.

(b) The authority to carry firearms by a licensee will be extended only while the licensee is performing the required duties of his or her employment and while en route to or from his or her place of employment. (Prior code §5-C709; Ord. 742 §1(part), 1973; Ord. 896 §1(part), 1976; Ord. 1589, 1999)

**Sec. 5-36-150. Discharge of licensee; notice and surrender of license.**

(a) Whenever a business or industrial guard or a merchant guard or merchant patrol is discharged for any reason, the licensee shall immediately notify the Chief of Police of such fact, together with the reasons for the dismissal.

(b) When a licensee is dismissed, he or she shall forthwith surrender his or her license to the Chief of Police. In the event the person surrendering his or her license is reemployed during the remainder of the year, the license may be reissued to him or her without charge. (Prior code §5-C710(a)(b); Ord. 742 §1(part), 1973; Ord. 896 §1(part), 1976)

**Sec. 5-36-160. Notification required for address change.**

Any licensee changing his or her place of business or abode shall immediately notify the Chief of Police of such fact, together with the address of the new place of business or abode; provided, however, that in the event a licensee changes his or her place of abode, this shall not be deemed to be transfer of license or require the payment of any additional fees. (Prior code §5-C710(c); Ord. 742 §1(part), 1973; Ord. 896 §1(part), 1976)



**Sec. 5-36-170. Unlawful acts.**

It is unlawful for any licensee to:

- (1) Arrest any person except when that person commits a criminal offense in the presence of the licensee;
- (2) Fail to turn over immediately to the Police Department any such person arrested;
- (3) Draw or fire a firearm in the performance of his or her duties except when necessary to protect himself or herself from bodily harm, or others against felonious assault or serious bodily injury and when all other means have failed to subdue the assailant, and then only when there is no obvious danger of injury to innocent persons. Under no circumstances shall a licensee use the firearm to shoot at or warn a person who is fleeing to avoid arrest for a misdemeanor or ordinance violation;
- (4) Fire at fleeing vehicles or the drivers or occupants unless the licensee has personal knowledge that the drivers or occupants have committed a dangerous felony, such as murder, robbery, sexual assault, mayhem or aggravated assault and there may be probable cause to believe that more lives may be placed in jeopardy unless the suspects are immediately apprehended;
- (5) Hinder or interfere with any investigation under the jurisdiction of the Police Department;
- (6) Wear a uniform, badge or insignia other than that authorized by the Chief of Police or at any time other than while in the performance of duties;
- (7) Fail to report immediately to the Police Department all violations of City, state or federal laws;
- (8) Investigate any acts or make any arrest except in connection with offenses or suspected offenses committed on the property of the licensee or that property which the licensee is employed to protect;
- (9) Represent himself or herself to be an officer of the Police Department or other governmental law enforcement agency; or
- (10) Fail to conduct himself or herself in a lawful and orderly manner at all times. (Prior code §5-B711; Ord. 742 §1(part), 1973; Ord. 896 §1(part), 1976; Ord. 1589, 1999)

**Sec. 5-36-180. City Clerk authority to suspend or refuse license.**

The City Clerk shall have the power to suspend, revoke or refuse to renew any license granted under this Article for violation of any federal or state statute or serious City ordinance subject to review by the City Council within ten (10) days of such action by the City Clerk. (Prior code §5-B713; Ord. 742 §1(part), 1973; Ord. 896 §1(part), 1976)

**Sec. 5-36-190. Administration responsibility.**

The Chief of Police shall be responsible for the administration of this Article and may issue and promulgate such rules not inconsistent with this Article subject to approval by the City Manager as

may be necessary to effectuate the purpose and intent of this Article. By way of example, such rules pertaining to duties of licensees may include the furnishing of periodic reports to the Chief of Police at such times as are deemed necessary to assure compliance with this Article. (Prior code §5-B714; Ord. 742 §1(part), 1973; Ord. 896 §1(part), 1976)

## **ARTICLE 5-44**

### **Pawnbrokers**

#### **Sec. 5-44-10. Definitions.**

The following words and phrases, when used in this Article, shall have the following meanings, unless the context clearly indicates a different meaning.

(1) *Pawnbroker* means a person regularly engaged in the business of making contracts for purchase or purchase transactions in the course of his or her business.

(2) *Purchase transaction* means the purchase by a pawnbroker in the course of his or her business of tangible personal property for resale, other than newly manufactured tangible personal property which has not previously been sold at retail, when such purchase does not constitute a contract for purchase.

(3) *Tangible personal property* means all personal property other than choses in action, securities or printed evidences of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of his or her business in connection with the contract for purchase or purchase transaction. (Ord. 1323 §2, 1989)

#### **Sec. 5-44-20. License required.**

It is unlawful for any person to establish or conduct the business of pawnbroker unless such person shall have first procured a license as provided in this Article. (Prior code §5-A702; Ord. 785 §1(part), 1974; Ord. 1589, 1999)

#### **Sec. 5-44-30. Application for license.**

Every person desiring to engage in the business of pawnbroker shall make an application to the City Clerk in writing. Such application shall state the name of the person and, in case the applicant is a firm or corporation, the application shall state the names of the persons composing the firm or the officers of the corporation, and the address where the business is to be conducted and the amount of capital proposed to be used by the applicant in such business. (Prior code §5-A703; Ord. 785 §1(part), 1974)

#### **Sec. 5-44-40. Issuance of license; fee.**

Every person having complied with the provisions of Section 5-44-30 and having deposited with the City Clerk the amount of the license fee herein required, and having produced satisfactory evidence of his or her good character as being a suitable person to carry on the business of pawnbroker shall be granted a license by the City Manager as provided in this Article. The license issued hereunder shall state the name of the licensee and the address of the place of business. Such license shall entitle the licensee to do business at the place designated therein and shall not be transferable from one (1) person

to another, but may be transferred from one (1) place to another with the consent of the City Manager. (Prior code §5-A704; Ord. 785 §1(part), 1974; Ord. 1589, 1999)

**Sec. 5-44-50. License fee, term, expiration.**

The annual license fee for conducting the business of pawnbroker shall be in an amount to be set by resolution of the City Council, which shall remain in effect until such resolution is amended by action of the City Council. All such licenses shall expire on December 31 of each year. (Prior code §5-A705(part); Ord. 785 §1(part), 1974; Ord. 1435 §9, 1993)

**Sec. 5-44-60. License renewal and replacement; bond requirements.**

No renewal or replacement license shall be issued for a period of less than six (6) months. No license shall be effective until the licensee shall furnish a good and sufficient bond with at least two (2) sureties or a corporate surety authorized to do business in the State, in a sum to be set by resolution of the City Council; and shall be conditioned on the faithful performance and observance of all ordinances and regulations of the City relating to pawns, pledges and pawnbrokers, and for the safekeeping or return of all articles held in pawn or pledge by such pawnbroker. (Prior code §5-A705(part); Ord. 785 §1(part), 1974; Ord. 1435 §9, 1993)

**Sec. 5-44-70. Required acts of pawnbrokers.**

A pawnbroker shall keep such records and perform such duties as provided in Section 12-56-103, C.R.S., as amended. (Ord. 1323 §3, 1989)

**Sec. 5-44-80. Prohibited acts.**

No pawnbroker shall violate the provisions of Section 12-56-104, C.R.S. (Ord. 1323 §4, 1989)

**Sec. 5-44-110. Lending to minor or intoxicated persons prohibited.**

No pawnbroker shall make any loan to any person under eighteen (18) years of age on any article or thing or take any article in pawn from any person obviously under the influence of intoxicating liquor or drugs. (Ord. 1323 §5 1989)

**Sec. 5-44-120. Safekeeping of pledges and insurance required.**

Any pawnbroker licensed and operating under the provisions of this Article shall provide a safe place for the keeping of pledges received by such licensee and shall have sufficient insurance on the property to pay for the value thereof in the event of loss by fire or otherwise. Proof of such insurance shall be deposited with the City Clerk. (Prior code §5-A711; Ord. 785 §1(part), 1974)

**Sec. 5-44-130. Statutory provisions; applicability.**

Regulation of pawnbrokers is a subject of joint statewide and local concern. The provisions of this Article are not intended to prohibit what the State allows nor allow what the State prohibits. Any conflict between the provisions of state statutes and the provisions of this Article shall be resolved accordingly. It is the intention of this Article to license and regulate all pawnbrokers doing business in this City and that all such pawnbrokers will be subject to the provisions of both this Article and applicable state statutes. (Ord. 1323 §6, 1989; Ord. 1589, 1999)

**Sec. 5-44-140. Violation; penalty.**

Any person violating any of the provisions of this Article upon conviction shall be punishable as provided in Article 1-24 of this Code. It is intended that this penalty shall apply to all violations of this Article except the felony violations specified in Section 12-56-104, C.R.S. (Ord. 1323 §7, 1989; Ord. 1589, 1999)

**ARTICLE 5-48**

**Peddlers, Canvassers and Solicitors**

**Sec. 5-48-10. Definitions.**

As used in this Article:

(1) *Canvasser* or *solicitor* means any individual, whether a resident of the City or not, traveling either by foot, wagon, automobile, motor truck or any other type of conveyance, from place to place, from house to house or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has carried or exposed for sale a sample of the subject of such sale or whether he or she is collecting advance payments on such sales or not; provided that such definition includes any person who, for himself or for another person, hires, leases, uses or occupies any building, structure, tent, railroad boxcar, hotel room, lodging house, apartment, shop or any other place within the City for the sole purpose of exhibiting any samples and taking orders for future delivery.

(2) *Peddler* means and includes any person, whether a resident of the City or not, traveling by foot, wagon, automotive vehicle or any other type of conveyance, from place to place, from house to house or from street to street, carrying, conveying or transporting goods, wares and merchandise, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, sells or offers the same for sale from a wagon, automotive vehicle, railroad car or other vehicle or conveyance; and further provided that one who solicits orders and as a separate transaction makes deliveries to purchasers as a part of scheme or design to evade the provisions of this Article shall be deemed a peddler subject to the provisions of this Article. *Peddler* includes the words *hawker* and *huckster*.

(3) *Person* means and includes the singular and the plural and also means and includes any person, firm or corporation, association, club, copartnership or society, or any other organization.

(4) *Transient merchant*, *itinerant merchant* or *itinerant vendor* means any person, whether as owner, agent, consignee or employee, whether a resident of the City or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within the City, and who, in furtherance of such purpose, hires, leases, uses or occupies any public room in hotels, lodging houses, apartments, shops or any street, alley or other place within the City, for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction. However, such definition shall not be constructed to include any person occupying such temporary location who does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery only. The person so engaged shall not be relieved from complying with the provisions of this Article merely by reason of associating temporarily with any local dealer, trader,

merchant or auctioneer, or by conducting such transient business in connection with, as a part of or in the name of any local dealer, trader, merchant or auctioneer. (Prior code §5-602; Ord. 1589, 1999)

**Sec. 5-48-20. License required.**

It is unlawful for any person to engage in the business of a peddler, solicitor, canvasser or itinerant vendor, as defined in Section 5-48-10, within the corporate limits of the City, without first obtaining a license therefor as provided in this Article. (Prior code §5-601)

**Sec. 5-48-30. License application; bond; nontransferability.**

Every individual who is a peddler, canvasser, solicitor, transient merchant, itinerant merchant or itinerant vendor as defined in Section 5-48-10 shall be required to make an individual application, give a bond and secure a license, which license shall be issued in the individual's name. No license shall be transferable or used by any other person. Any license issued to a firm, association or corporation shall include the name of the authorized representative of the firm, association or corporation, which individual name of the representative shall appear on the application, bond, badge and license. No representative of the same firm, association or corporation shall use the same license; provided that an individual license may authorize the same individual to be a peddler, canvasser, solicitor, transient merchant, itinerant merchant or itinerant vendor, and such multipurpose license shall be for the same fee as if the license was issued for only one (1) purpose. (Prior code §5-608)

**Sec. 5-48-40. Bond required; conditions and approval.**

Before any license, as provided by this Article, is issued to an applicant, such applicant shall file with the City Clerk a bond running to the City in the sum of one thousand dollars (\$1,000.00), executed by the applicant as principal and at least one (1) surety upon which service of process may be made in the State; such bond to be conditioned that the applicant shall comply fully with all the provisions of the City ordinances and of the state statutes regulating and concerning the applicant's business, and will pay all judgments rendered against said applicant for any violation of said ordinances or statutes, or any of them together with all judgments and costs that may be recovered against him or her by any person for damage growing out of any misrepresentation or deception practiced on any person transacting such business with such applicant, whether the misrepresentations or deceptions were made or practiced by the owners or by their servants, agents or employees, either at the time of making the sale or through any advertisement of any character whatsoever, printed or circulated with reference to the goods, wares and merchandise sold or any part thereof. Action on the bond may be brought in the name of the City to the use of the aggrieved person. Such bond must be approved by the City Clerk, both as to form and as to the responsibility of the surety thereon. (Prior code §5-605; Ord. 1589, 1999)

**Sec. 5-48-50. Application contents.**

An applicant for a license under this Article must file with the City Clerk an application in writing on a form to be furnished by the City Clerk, giving the following information:

- (1) Name and description of the applicant;
- (2) Address, including an address where the applicant may be reached in the area of the City;

(3) A brief description of the nature of the business and the goods to be sold, solicited or delivered;

(4) The length of time for which the right to do business is desired;

(5) If a vehicle is to be used, a description of the same, including a license number;

(6) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal ordinance and if so, the nature of the offense, and the punishment or penalty assessed therefor;

(7) A brief description of the nature and character of the advertising to be used for the business;

(8) Credentials from the employer of the applicant, including an authorization from the employer permitting the applicant to act as a representative in the City; and

(9) Such other information as the City Clerk shall deem necessary for the public health, safety and welfare. (Prior code §5-603; Ord. 843 §1, 1975)

**Sec. 5-48-60. License application; investigation.**

(a) Upon receipt of such application by the City Clerk, the City Clerk shall cause an investigation of the applicant's business and character to be made to the extent being necessary for the protection of the public health, safety and welfare.

(b) If, as a result of such investigation, the applicant's character or business responsibility is found to be unsatisfactory, the City Clerk shall endorse on such application his or her disapproval and his or her reasons therefor, and shall notify the applicant that the application has been disapproved and that no license will be issued for the reasons stated.

(c) If, as a result of such investigation, the character and business responsibility of the applicant are found to be satisfactory, the City Clerk shall endorse his or her approval on the application.

(d) Upon posting the bond as required by this Article, and payment of the required license fee by the applicant, the City Clerk shall issue the license applied for. (Prior code §5-604; Ord. 843 §2, 1975; Ord. 1589, 1999)

**Sec. 5-48-70. Fee schedule; exception.**

License fees pursuant to this Article shall be set by resolution of the City Council and shall remain in effect until such resolution is amended by action of the City Council. No fee shall be required of a person selling products of the farm or orchard actually produced by the seller. (Prior code §5-606; Ord. 843 §3, 1975; Ord. 1435 §10, 1993; Ord. 1589, 1999)

**Sec. 5-48-80. Expiration of license.**

Each annual license issued pursuant to the provisions of this Article shall expire at 12:00 midnight on December 31 of the year for which the license is issued. Other licenses issued pursuant to this Article shall expire on the date specified in the license. (Prior code §5-613; Ord. 843 §9, 1975)

**Sec. 5-48-90. Suspension or revocation conditions.**

Licenses issued pursuant to the provisions of this Article may be revoked or suspended by the City Council after notice and hearing for any of the following causes:

- (1) Fraud, misrepresentation or false statement contained in the application for license;
- (2) Fraud, misrepresentation or false statement made in the course of carrying on the business for which the license is issued;
- (3) Any violation of a City ordinance or state statute;
- (4) Conduct of the business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public. (Prior code §5-611; Ord. 843 §7, 1975)

**Sec. 5-48-100. Exhibition of license required.**

Each licensee hereunder shall exhibit his or her license at the time of initial introduction to persons in the City for the purpose of consummating any transaction included in this Article. (Prior code §5-612; Ord. 843 §8, 1975)

**Sec. 5-48-110. Exemptions to Article applicability.**

(a) This Article does not apply to persons selling personal property at wholesale to retailers in the City, nor to merchants or their employees with established premises for the conduct of sales to the public who deliver goods in the regular course of business in the City, nor shall it apply to the following professions or businesses in the City: newsboys, state-licensed real estate agents, state-licensed insurance agents, public utilities and their employees franchised to do business within the City, and motor vehicle salesmen.

(b) Any person desiring to solicit or have solicited in his or her name money, property or financial assistance of any kind or desiring to sell or distribute any item of literature or merchandise for which a fee is charged or solicited from persons in the City for charitable, religious, patriotic or philanthropic purposes, shall be exempt from the requirements of Sections 5-48-40, 5-48-50 and 5-48-70 of this Article, provided that there is filed with the City Clerk an application giving the following information:

- (1) Name and purpose of the cause;
- (2) Names and addresses of the officers and directors of the organizations;
- (3) Period during which solicitation is to be carried on; and
- (4) Whether or not any commissions, fees or wages are to be expended in connection with such solicitation and the amount thereof.

(c) In all other respects, the requirements of this Article shall apply to such applicants. (Prior code §5-607; Ord. 862 §1, 1976)

**Sec. 5-48-120. Chief of Police to report violations.**

The Chief of Police shall report to the City Clerk all violations and suspected violations of this Article. (Prior code §5-610; Ord. 843 §6, 1975)

**ARTICLE 5-52**

**Poolrooms, Billiard Halls and Bowling Alleys**

**Sec. 5-52-10. License required.**

No person shall operate or maintain for profit, or permit the operation or maintenance for profit, within the City, any billiard hall, poolroom or bowling alley, without having received a license therefor from the City pursuant to the provisions of this Article. (Prior code §5-407; Ord. 852 §1(part), 1975)

**Sec. 5-52-20. Fee schedule.**

(a) The annual license fee for a billiard hall or poolroom in the City shall be set by resolution of the City Council and shall remain in effect until such resolution is amended by action of the City Council, and shall be payable to the City Clerk at the time of application for the license.

(b) The annual license fee for operation of a bowling alley in the City shall be set by resolution of the City Council and shall remain in effect until such resolution is amended by action of the City Council, and shall be payable to the City Clerk at the time of application for the license. (Prior code §5-408; Ord. 852 §1(part), 1975; Ord. 1435 §11, 1993)

**Sec. 5-52-30. Expiration.**

All licenses issued pursuant to the provisions of this Article shall expire at 12:00 midnight on December 31 of the year for which issued. (Prior code §5-409; Ord. 852 §1(part), 1975)

**ARTICLE 5-56**

**Public Dances**

**Sec. 5-56-10. License required; exceptions.**

No person shall operate, maintain or permit the operation or maintenance of a public dance hall, booth, pavilion or other place where dancing is permitted in public, in a place provided therefor within the City, without first obtaining a license therefor pursuant to the provisions of this Article. This requirement shall not apply to dances conducted by schools, churches or charitable organizations. (Prior code §5-430; Ord. 856 §1(part), 1975)

**Sec. 5-56-20. Fee; license term.**

Upon application for a license pursuant to the provisions of this Article, there shall be paid to the City Clerk a fee to be set by resolution of the City Council, which shall remain in effect until such resolution is amended by action of the City Council. Such license shall be issued for a period of one



(1) year or any portion thereof, and shall expire on December 31. (Prior code §5-431; Ord. 856 §1(part), 1975; Ord. 1435 §12, 1993)

**Sec. 5-56-30. Location; nontransferability.**

Each license issued pursuant to the provisions of this Article shall be for a particular place or premises as described in the application and in the license and shall not be transferable to a different place or premises. (Prior code §5-432; Ord. 856 §1(part), 1975)

**Sec. 5-56-40. Expiration.**

Each license issued pursuant to the provisions of this Article shall expire at 12:00 midnight on December 31 of the year for which the license is issued. (Prior code §5-433; Ord. 856 §1, 1975)

**ARTICLE 5-68**

**Tree Care**

**Sec. 5-68-10. License required.**

It is unlawful for any person to engage in the business for hire of planting, cutting, trimming, pruning, removing, spraying or otherwise treating trees, shrubs, hedges or vines, or applying herbicides, insecticides, fungicides, soil conditioners or fertilizers by spraying or disseminating any such materials by any device, other than by hand tools, actuated in whole or in part by compressed air, gas, water or mechanical means or source, without first obtaining a license therefor from the City. (Ord. 664 §1(part), 1971; Ord. 1589, 1999)

**Sec. 5-68-20. Application; contents.**

The license application shall specify the type or types of service to be performed. Before any license is issued, the applicant will be examined orally and/or in writing to determine the applicant's qualifications and competency to engage in the requested business. Each such license issued shall specify on its face the type or types of service the licensee is authorized to perform. (Ord. 664 §1(part), 1971)

**Sec. 5-68-30. Fee.**

The annual license fee shall be paid to the City Clerk at the time of application for the license, and such fee shall be an amount to be set by resolution of the City Council, which shall remain in effect until such resolution is amended by action of the City Council. If the initial license is issued after June 30, the fee for the balance of the calendar year shall be one-half (½) of the annual fee. (Ord. 664 §1(part), 1971; Ord. 1435 §15, 1993)

**Sec. 5-68-40. Insurance requirements.**

No license shall be issued until the licensee files with the City Clerk a satisfactory public liability insurance policy covering all operations of the licensee in the sum of at least fifty thousand dollars (\$50,000.00) for each person injured and not less than one hundred thousand dollars (\$100,000.00) in case of injury of two (2) or more persons in any one (1) accident, and in the sum of not less than twenty-five thousand dollars (\$25,000.00) for property damage. The policy may be written to allow

the first one hundred dollars (\$100.00) of liability for damage to property to be deductible. Should any policy be cancelled, the City shall be notified by the company writing such policy within ten (10) days after such cancellation is effective. Failure of the licensee to maintain required insurance shall be grounds for revocation or suspension of such license. (Ord. 664 §1(part), 1971)

## **ARTICLE 5-72**

### **Massage Therapist Licenses**

#### **Sec. 5-72-10. Short title.**

This Article may be cited as the "Brighton Massage Therapist Licensing Code." (Ord. 1753 §1, 2002)

#### **Sec. 5-72-20. Required; term.**

No person shall engage in the business of providing a massage, massage therapy or massage services without first obtaining from the City Clerk a massage therapist license authorizing the person to engage in such business. Each license must be renewed annually. (Ord. 1753 §1, 2002)

#### **Sec. 5-72-30. Definitions.**

As used in this Article:

(1) *Massage* means a method of treating the body for remedial or hygienic purposes, including but not limited to rubbing, stroking, kneading or tapping with the hand or an instrument or both.

(2) *Massage therapist* means a person who has graduated from a massage therapy school approved or accredited by the state educational board or division charged with the responsibility of approving or accrediting private occupational schools or from a school with comparable approval or accreditation from another state with transcripts showing completion of at least five hundred (500) hours of training in massage therapy. A massage therapy school may include an equivalency program approved or accredited by the state educational board or division charged with the responsibility of approving or accrediting private occupational schools. (Ord. 1753 §1, 2002)

#### **Sec. 5-72-40. Qualifications.**

Massage therapist licenses shall be issued only to persons qualified as massage therapists. (Ord. 1753 §1, 2002)

#### **Sec. 5-72-50. Applications.**

Every applicant for a massage therapist license shall furnish the City Clerk the following:

- (1) Name, date of birth and residential address;
- (2) Applicant's height, weight and color of eyes;
- (3) Diploma or certificate of graduation as contemplated by Section 5-72-30 above;

(4) Evidence that the school attended complies with the requirements of Section 5-72-30. (Ord. 1753 §1, 2002)

**Sec. 5-72-60. License and renewal fees.**

Each application for a new license or a renewal shall be accompanied by a fee paid to the City Clerk at the time of application for a license, and such fee shall be an amount to be set by resolution of the City Council and shall remain in effect until such resolution is amended by action of the City Council. Such license shall be issued For a period of one (1) year or any portion thereof, and shall expire on December 31. (Ord. 1753 §1, 2002)

**ARTICLE 5-73**

**Massage Parlors**

**Sec. 5-73-10. Short title.**

This Article may be cited as the "Brighton Massage Parlor Code." (Ord. 1753 §2, 2002)

**Sec. 5-73-20. License required; term.**

No person shall engage in the business of operating a massage parlor without first obtaining from the local licensing authority, as described in Section 5-73-40 below, a massage parlor license authorizing the person to engage in such business. Each license must be renewed annually. (Ord. 1753 §2, 2002)

**Sec. 5-73-30. Definitions.**

As used in this Article:

(1) *Applicant* includes any natural person, partnership, association, company, corporation, organization or other association making application for licensing under this Article. Whenever the application required pursuant to Section 5-73-50 below provides for the furnishing of information or production of documents, and the applicant is other than a natural person, then such information or production requirements shall apply to the individual making such application, along with all partners and associates, if the applicant is a partnership or other association; and the president, vice president, secretary, managing officer and all shareholders holding over ten percent (10%) of the outstanding capital stock, if the applicant is a corporation. The applicant shall additionally provide the information and production for each employee providing massage services, and in each instance such information and production shall be submitted before the issuance of any identity card as to that individual.

(2) *Massage parlor* means an establishment providing massage, but it does not include training rooms of public and private schools approved or accredited by the state educational board or approved or accredited by the division charged with the responsibility of approving or accrediting private occupational schools, training rooms of recognized professional or amateur athletic teams and licensed health care facilities. A facility operated for the purpose of massage therapy performed by a massage therapist is not a parlor.

(3) *Massage therapist* means a person who has graduated from a massage therapy school approved or accredited by the state educational board or division charged with the responsibility of approving or accrediting private occupational schools, or from a school with comparable approval or accreditation from another state with transcripts indicating completion of at least five hundred (500) hours of training in massage therapy.

(4) *A massage therapy school* may include an equivalency program approved or accredited by the state educational board or division charged with the responsibility of approving or accrediting private occupational schools. (Ord. 1753 §2, 2002)

**Sec. 5-73-40. Local licensing authority designated.**

The City Council shall be the local licensing authority for the licensing of massage parlors. (Ord. 1753 §2, 2002)

**Sec. 5-73-50. License application.**

Every applicant for the issuance of a massage parlor license shall, upon application, submit the following documents and specify the following information, in writing and verified by oath or affirmation, upon forms prepared and furnished by the local licensing authority:

(1) Name, date of birth and residential address of applicant for the immediate past three (3) years, providing dates of residency for each such address;

(2) Written statements of at least three (3) bona fide residents of the City relating to the issue of the good moral character of the applicant;

(3) Written proof that the applicant is over the age of eighteen (18) years;

(4) Applicant's height, weight and color of eyes;

(5) Two (2) recent portrait photographs at two (2) inches by two (2) inches reflecting the present general appearance of the applicant;

(6) Applicant shall submit to the City Police Department for the taking of fingerprints, which shall be retained by the City Clerk;

(7) The business, occupation or employment of the applicant for the five (5) years immediately preceding the date of application;

(8) The massage or similar business license history of the applicant, including whether such person, in a previous operation, in this or another state, has had his or her license revoked or suspended, the reason therefor and any such business activity or occupation subsequent to the action of suspension or revocation;

(9) The conviction or plea of *nolo contendere* or no contest of any crime which in its nature, under the laws of the State, would constitute a felony, along with any conviction for crimes in the nature of prostitution, pimping or pandering;

(10) A certificate from a medical doctor or doctor of osteopathy designating that, as to each person applying massage, within thirty (30) days immediately prior thereto, he or she has been examined and found to be free of any contagious or communicable disease;

(11) The address of the premises where the massage business will be located; whether the building in which the massage activity is to be conducted is located within five hundred (500) feet of any church, public or parochial school, the principal campus of any college, university or seminary or any property used for residential purposes. The distance referred to in this Section is to be computed by direct measurement from the nearest property line of the land used for school, church or residential purposes to the nearest portion of the building in which the massage activity is to be conducted, using a route of direct pedestrian access; and such location shall be considered in determining whether such license should be granted;

(12) Such other identification and information as the Chief of Police may require in order to discover the truth of the information set forth in the application. (Ord. 1753 §2, 2002)

#### **Sec. 5-73-60. Minimum requirements.**

The application for a new massage parlor license shall not be issued unless an inspection by the City reveals that the establishment complies with each of the following minimum requirements:

(1) Sign. A recognizable and legible sign shall be posted at the main entrance identifying the establishment as a massage parlor.

(2) Lighting. Minimum lighting shall be provided in accordance with the Uniform Building Code and, in addition, at least an artificial light of not less than forty (40) watts shall be provided in each room or enclosure where massage services are performed on patrons.

(3) Ventilation. Minimum ventilation shall be provided in accordance with the Uniform Building Code.

(4) Equipment. Adequate equipment for disinfecting and sterilizing instruments used in performing acts of massage shall be provided.

(5) Water. Hot and cold running water shall be provided at all times.

(6) Linen storage. Closed cabinets shall be provided for the storage of clean linen.

(7) Bathing, dressing, locker and toilet facilities. Adequate bathing, dressing, locker and toilet facilities shall be provided for patrons. A minimum of one (1) tub or shower, one (1) dressing room containing a separate locker for each patron to be served, which locker shall be capable of being locked, and a minimum of one (1) toilet and one (1) wash basin shall be provided by every massage parlor; provided, however, that if male and female patrons are to be served simultaneously at said establishment, a separate massage room or rooms, separate dressing facilities and separate toilet facilities shall be provided for male and female patrons.

(8) Physical and sanitary conditions. All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities for the parlor must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms or steam or vapor

cabinets, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after use.

(9) Towels and linens. Clean and sanitary towels and linens shall be provided for each person of the establishment. No common use of towels and linens shall be permitted.

(10) Facilities and employees. A minimum of one (1) separate wash basin shall be provided in each massage parlor for the use of employees of any such establishment, which basin shall provide soap or detergent and hot and cold running water at all times, and shall be located within or as close as practicable to the area devoted to the performing of massage services. In addition, there shall be provided, at each wash basin, sanitary towels placed in a permanently installed dispenser.

(11) Compliance is required with all zoning, building and fire prevention laws of the City. (Ord. 1753 §2, 2002)

#### **Sec. 5-73-70. License and renewal fees.**

Each application for a new massage parlor license or renewal shall be accompanied by a fee to be paid to the City Clerk at the time of application for a license. Such fee shall be in an amount to be set by resolution of the City Council and shall remain in effect until such resolution is amended by action of the City Council. Such license shall be issued for a period of one (1) year or any portion thereof, and shall expire on December 31. (Ord. 1753 §2, 2002)

#### **Sec. 5-73-80. Identity card required; contents; validity.**

Prior to commencing work in the provision or application of massage services in or upon the licensed premises, every applicant, licensee and employee shall obtain an identity card, required by the Colorado Massage Parlor Code, from the Brighton Police Department, which card shall contain the name, address, date of birth, name of physician and date of medical examination as required by Section 5-73-50, a recent photograph of suitable size, along with the name of the person or firm to whom the massage parlor license is issued, and the license number and street address of the licensed premises. Such identity card shall be signed by the City Clerk or designee. The identity card shall only be valid upon the premises of the massage parlor thereon endorsed, and unless revoked or suspended, shall be valid during the term of the current massage parlor license. (Ord. 1753 §2, 2002)

#### **Sec. 5-73-90. Massage therapy license.**

Any person, prior to engaging in the business of providing a massage, massage therapy or massage services upon the premises of a duly licensed massage parlor, shall obtain, and at all times retain, a valid massage therapist license. A duly licensed massage parlor operator shall not engage in the business of performing massage, massage therapy or massage services without a massage therapist license under Article 5-72 of this Code. (Ord. 1753 §2, 2002)

## **ARTICLE 5-76**

### **Use of 1886 Church**

#### **Sec. 5-76-10. Authorization required.**

Except as hereinafter provided, no person, organization or association shall use the 1886 Church located at 147 South Main Street, City of Brighton, Colorado, without first having obtained authorization therefor from the City. (Ord. 926 §1(part), 1977)

#### **Sec. 5-76-20. Application for authorization.**

Application for such use shall be made in such manner as is approved by the City Manager. (Ord. 926 §1(part), 1977)

#### **Sec. 5-76-30. Fees.**

The schedule of fees to be charged for use of the 1886 Church shall be reviewed at such times as the City Council determines to be necessary and shall be set by resolution duly adopted by the City Council. (Ord. 1247, 1986)

#### **Sec. 5-76-40. Exemption.**

This Article shall not be construed to require any payment or deposit of fees with the City by the Adams County Historical Society for use of the 1886 Church. (Ord. 926 §1(part), 1977)

## **ARTICLE 5-80**

### **Franchise for Gas and Electricity**

#### *Division I. Grant of Franchise*

#### **Sec. 5-80-10. Grant of franchise.**

The City of Brighton (the "City") grants to Public Service Company of Colorado (the "Company"), for the period of and subject to the conditions, terms and provisions contained in this Article, a nonexclusive right to furnish and sell gas and electricity to the City and to all persons, businesses and industry (hereinafter collectively referred to as "residents") within the City. Subject to the conditions, terms and provisions contained in this Article, the City also grants to the Company a gaseous fuels (gas) and electric energy (electricity) nonexclusive right to construct, install, maintain and operate all facilities reasonably necessary to provide gaseous and electrical energy within the City and a nonexclusive right to make reasonable use of the streets, alleys, bridges, viaducts, public property and public ways as may be necessary to carry out the terms of this Article. These rights shall extend to all areas as the City may increase in size by annexation or otherwise. For the purpose of this Article, the term *gas* shall include natural, artificial, synthesis liquefied natural, liquefied petroleum, manufactured or any mixture thereof. (Ord. 1196 (part), 1985)

**Sec. 5-80-15. Transfer of electric franchise to United Power, Inc.**

Pursuant to Article VIII of Ordinance No. 1196, the City hereby grants approval for the transfer of the electric franchise granted through Ordinance No. 1196 to United Power, Inc. Ordinance No. 1196 is amended to reflect United Power, Inc. as the franchise for electric service. The elements of Ordinance 1196 which grant to Public Service Company of Colorado the franchise right to provide natural gas service within the City shall remain effective and fully enforceable according to the terms thereof as originally enacted. (Ord. 1438 (part), 1993)

**Sec. 5-80-20. Street lighting service.**

The rights granted in this Article encompass the nonexclusive right, duty and franchise to provide street lighting service to the City and the provisions of this Article apply with full and equal force to the street lighting service provided by the Company. Wherever reference is made to the sale of electricity or to the provision of electric service in this Article, these references shall be deemed to include the provision of street lighting service. Wherever reference is made to company facilities, equipment, system or plant in this Article, this reference shall be deemed to include company-owned street lighting facilities, equipment, system and plant. (Ord. 1196 (part), 1985)

**Sec. 5-80-30. Term of franchise.**

The term of this franchise shall be for twenty-five (25) years, beginning on the effective date of the ordinance codified in this Article. (Ord. 1196 (part), 1985)

*Division 2. Franchise Fee*

**Sec. 5-80-40. Franchise fee.**

In consideration for the grant of this franchise, the Company shall pay the City a sum equal to three percent (3%) of all gross revenue per year derived from the sale of gas and electricity within the City or from gross revenues accruing to the Company from the use of its utility facilities within the City. *Gross revenue* as used herein means any revenue derived under authorized temporary or permanent rates, or otherwise, from sales of gas and electricity or use of its utility facilities within the City, after the adjustments for the net write-off of uncollectible accounts and corrections of bills theretofore rendered. In no event will the City be required to refund franchise fees previously paid by the Company, nor shall the Company deduct any refund from subsequent payments to the City duly calculated on the then-effective gross revenues. Included within *gross revenue* shall be all amounts paid to the Company by the City or any of its departments. (Ord. 1196 (part), 1985)

**Sec. 5-80-50. Payment schedule.**

For the franchise fee owed on gross revenues received after the effective date of the ordinance codified in this Article, payment shall be made in monthly installments not more than thirty (30) days following the close of the month for which payment is to be made. Initial and final payments shall be prorated for the portions of the months at the beginning and end of the term of this Article. All payments shall be made to the Director of Finance. The City Manager shall have access to the books of the Company for the purpose of auditing or checking to insure that the franchise fee has been correctly computed and paid. (Ord. 1196 (part), 1985; Ord. 1589, 1999)



**Sec. 5-80-60. Change of franchise fee.**

Once during each calendar year of the franchise term, the City Council, upon giving thirty (30) days' notice to the Company of its intention to do so, may review and change the consideration paid by the Company under this Article, the franchise fee or other consideration the City may be entitled to receive as a part of the franchise. The City Council may change the franchise fee payments or change the other consideration to be received by the City under the terms of this franchise to the equivalent of any franchise fee or increased consideration paid by the Company to any CITY and town in the State in which the Company supplies gas and/or electric service under franchise. The Company shall report to the City within thirty (30) days of execution of a franchise or of any change of franchise in other municipalities that could have a financial impact on the consideration to be paid by the Company to the City hereunder. If the City Council decides the franchise fee or other term shall be so changed, it shall provide for such change by ordinance; provided, however, that any changed franchise fee is then allowed to be surcharged by the Company and such changed franchise fee is not higher than the highest franchise fee paid by the Company to any municipality within the State. (Ord. 1196 (part), 1985)

**Sec. 5-80-70. Franchise fee payment in lieu of other fees.**

So long as the Company performs its obligations under this Article, including payment of the franchise fee, the Company will be exempt from the payment of any license fees or charges to the City, but payment of the franchise fee does not exempt the Company from any lawful taxation upon its property from sales and use taxes, excavation permit fees and building permit charges, and from fees and charges for excavating for or construction of underground or overhead facilities that are uniform and generally applicable to contractors performing similar work. (Ord. 1196 (part), 1985)

**Sec. 5-80-80. Contract obligation.**

The franchise ordinance codified in this Article constitutes a valid and binding contract between the Company and the City. In the event that the franchise fee specified in this Article is declared illegal, unconstitutional or void for any reason by any court or other proper authority, the Company shall be contractually bound to pay the City, on the same schedule as provided herein for the franchise fee, an aggregate amount equal to the amount which would have been paid as a franchise fee. In addition, if the franchise fee is declared invalid, the City shall have the right to impose occupation and license fees and permit charges reasonably equivalent on an annual rate to said franchise fee. (Ord. 1196 (part), 1985)

*Division 3. Company Construction and Operation Obligations*

**Sec. 5-80-90. Adequate supply at lowest possible cost.**

The Company shall at all times take all reasonable and necessary steps to assure an adequate supply of gas and electricity to the City and its residents at the lowest possible cost. Should gas, electric power or energy be made available to the Company from whatever source at less cost than the cost which would be incurred by the Company to supply such gas, power or energy from its own systems, the Company agrees to purchase this lower-cost gas, power or energy and to pass on to the City and its residents any savings resulting from the purchase; provided, however, that any savings resulting in lower costs shall not be exclusively available to consumers in the City, but as part of the general rates of the Company. If the supply of gas or electricity to the City or its residents should be interrupted, the

Company shall immediately take all necessary and reasonable actions to restore such supply at the soonest possible time. (Ord. 1196 (part), 1985)

**Sec. 5-80-100. City approval of construction and design.**

Prior to construction of any gas compressor or regulator station, or any transmission lines or generating plant, building, substation or similar structure within the City, the Company shall furnish to the City the plans for such facilities, including all architectural, engineering and landscaping plans. In addition, the Company shall assess and report on the impact of its proposed construction on the City environment. Such plans and reports may be reviewed by the City to ensure (1) that all applicable laws, including building and zoning codes and air and water pollution regulations, are complied with; (2) that aesthetic and good planning principals have been given due consideration; and (3) that adverse impact on the environment has been minimized. The Company shall comply with all regulatory requirements of the City and shall incorporate all other changes requested by the City which are agreeable to the Company. (Ord. 1196 (part), 1985)

**Sec. 5-80-110. Excavation and construction.**

The Company shall comply with all City requirements for excavation and construction and shall be responsible for obtaining all applicable permits. The City shall have the right to supervise all construction or excavation. All construction, excavation, maintenance and repair work done by the Company shall be done in a timely and expeditious way and in a manner which minimizes the inconvenience to the public or individuals. All public and private property in dedicated easements disturbed by Company construction or excavation activities shall be restored as soon as possible by the Company, at its expense, to substantially its former condition subject to inspection by the Director of Public Works and compliance by the Company with reasonable remedial action required by the Director pursuant to said inspection. The Company shall comply with the City's requests for reasonable and prompt action to remedy all damage to private property adjacent to streets or dedicated easements where the Company is performing excavation or construction work. (Ord. 1196 (part), 1985)

**Sec. 5-80-120. Installation and maintenance of Company facilities.**

The installation, maintenance, renovation and replacement of any facilities by the Company shall be subject to regulation, inspection and approval by the Director of Public Works. Such regulation shall include, but not be limited to the following matters: location of facilities in the streets, alleys and dedicated easements; cutting and trimming of trees and shrubs; and disturbance of pavement, sidewalks and surfaces of streets, alleys, dedicated easements and driveways. All Company facilities shall be installed on public or dedicated easements so as to cause a minimal amount of interference with such property. Company facilities shall not interfere with the City's water mains, sewer mains or any other municipal use of the City's streets and rights-of-way. The Company shall erect and maintain its facilities in such a way so as to minimize interference with trees and other natural features. The Company shall keep in good working order all facilities constructed, erected or used within the City. (Ord. 1196 (part), 1985)

**Sec. 5-80-130. Warranty of Company facilities.**

The Company warrants to the City that it will install, repair, renovate and replace its facilities in a good and workmanlike manner and that the Company's facilities will be of sufficient quality and

durability to provide adequate and efficient electric and gas service to the City and its residents. The Company will require warranties customary for the industry from its third party suppliers of transformers and other major equipment incorporated into the Company's facilities and shall fully enforce any such warranty. (Ord. 1196 (part), 1985)

**Sec. 5-80-140. Continued compliance with air and water pollution laws.**

The Company shall continue to use its best efforts to take measures which will result in its facilities meeting the standards required by applicable federal and state air and water pollution laws. Upon the City's request, the Company will provide the City with a status report of such measures. (Ord. 1196 (part), 1985)

**Sec. 5-80-150. Relocation of Company facilities.**

If at any time the City requests the Company to relocate any facility installed or maintained in streets, alleys, public rights-of-way or dedicated easements pursuant to this or previous franchises in order to permit the City to make any public use of rights-of-way, easements or streets to construct any public improvement, to build any public project, or for any municipal purpose, such relocation shall be made by the Company at its expense. Following relocation, all property shall be restored to its former condition by the Company at its expense. Nothing herein contained shall be construed to impose any obligation upon the City to make any payment for any relocation of the Company's facilities, whether located within or without said designated areas. (Ord. 1196 (part), 1985)

**Sec. 5-80-160. Technological improvements.**

The Company shall introduce and install generally, as soon as practicable, gas and electrical energy technological advances in its equipment and service in the City when such advances are technically and economically feasible, and are safe and beneficial to the City and its residents. Upon request by the City, the Company shall review and promptly report advances which have occurred in the gas or electric utility industry that have been incorporated into the Company's operations in the City in the previous year or will be so incorporated in the next six (6) months. The Company shall report in advance to the City any plans to include technological advances relating to communications systems such as fiber optics which may utilize electric facilities already in place for the transmission of communication signals, which facilities may be installed by the Company for its use, the use of the City or for use of others as the Company may license. The City may use said facilities without cost, except such additional expense which may be incurred by the Company as a result of the City's use. Upon request of the City, the Company will provide a detailed report of the use of such communications systems. Nothing contained herein shall be construed to authorize the company to engage in telecommunications activities, nor shall this Article be construed as a franchise for said telecommunications activities within the City. (Ord. 1196 (part), 1985)

**Sec. 5-80-170. Company obligations to City.**

The Company shall protect all City property against injury which may arise out of the exercise by the Company of any rights or privileges herein granted. The Company shall be liable for any interference, damage or injury suffered by the City as a result of the exercise by the Company of any rights or privileges herein granted. This Section shall be applicable only to City and Company relationships. Nothing herein contained shall be construed to affect the liability of the Company to third party claims. (Ord. 1196 (part), 1985)

**Sec. 5-80-180. Service to new areas.**

If, during the term of this franchise the boundaries of the City are expanded, and if service is requested to that area, the Company shall extend service to residents of the newly incorporated areas in accordance with the Company's extension policy at the soonest practicable time. (Ord. 1196 (part), 1985)

**Sec. 5-80-190. Construction by City employees or developers.**

Subject to reasonable specifications and supervision imposed by the Company, the labor forces of the City or its contractors, at the City's request, shall be used to excavate for trenching subject to the provisions of the union contract with the Company; to install landscaping and to repair streets and public ways for any capital improvements, repairs or replacements of gas and electric service by the Company for municipal uses. At the City's request, the Company shall reimburse the City for all expenses incurred in said work; provided that said reimbursement shall not exceed the bid cost for said work; and provided further that in the event the City is not so reimbursed, the cost of said work by the City's labor forces shall not be included in operating expenses or rate base of the Company. The Company agrees to make a good faith attempt to utilize City employees on other facets of capital improvement projects serving municipal operations when feasible, so long as the City agrees to work subject to the Company's reasonable specifications and inspection, and so long as the use of City employees does not violate the working agreement between the Company and IBEW Local 111 or successor union. The Company will confer in good faith with subdivision developers with the goal of installing gas and electric facilities within subdivisions at the lowest cost consistent with proper installation. (Ord. 1196 (part), 1985)

**Sec. 5-80-200. City not required to advance funds.**

The Company shall extend its facilities to provide gas and electric service to the City for municipal uses within the City limits or for any major municipal facility outside the City limits and within the Company-certified area without requiring the City to advance funds in aid of construction more than ten (10) days in advance of construction. (Ord. 1196 (part), 1985)

**Sec. 5-80-210. Safety regulations by City.**

The City reserves the right to adopt, from time to time, reasonable regulations in the exercise of its police power to ensure the safety, welfare and accommodation of the public. The Company agrees to comply with all such regulations in its construction, maintenance and operation of its facilities and in the provision of electricity and gas within the City. (Ord. 1196 (part), 1985)

**Sec. 5-80-220. Compliance with PUC regulations.**

The Company shall assure that the gas and electrical energy it distributes meets with the minimum standards promulgated by the Colorado Public Utilities Commission (PUC), and the Company shall keep on file with the City copies of PUC Rules Regulating the Service of Electric and Gas Utilities and tariff provisions of the Company setting minimum standards, as the same may be amended from time to time, and the City shall have access to all records of the Company monitoring compliance with such standards. The Company shall file with the PUC, prior to final adoption by the City of the franchise, such amendments to its tariffs as may be necessary to make its tariff provisions compatible with the provisions of this Article, and shall report to the City any changes that have been made for this

purpose. The Company shall use its best efforts to assure the City during the term of the franchise that the tariffs of the Company shall not be in conflict with any of the provisions of this Article. (Ord. 1196 (part), 1985)

**Sec. 5-80-230. Inspection, audit and quality control.**

The City shall have the right to inspect any portion of the Company's system used to serve the City and its residents at all reasonable times. The City shall also have the right to inspect and conduct an audit of Company records relevant to compliance with any terms of this Article at all reasonable times. The Company agrees to cooperate fully with the City in conducting the inspection and/or audit and to correct any discrepancy affecting the City's interest in a prompt and efficient manner. (Ord. 1196 (part), 1985)

*Division 4. Reports to City*

**Sec. 5-80-240. Annual report on Company operations.**

In addition to reports required with regard to franchise fees, the Company shall provide the City by March 1 of each year an annual report which shall include the following information:

- (1) The return-earned by the Company on operations for the prior calendar year and the rate base used for calculation of such return in the form and detail required by the PUC for rate proceedings.
- (2) A list of all real property and leasehold interests in real property owned by the Company in the City, excepting dedicated and other easements.
- (3) Short-term (less than three [3] years) and long-range (over three [3] years) plans for all capital improvements, construction and excavation within the City or affecting service to the City and its residents.
- (4) Any other information which the City may reasonably from time to time request with respect to the operations of the Company under this franchise. (Ord. 1196 (part), 1985)

**Sec. 5-80-250. Copies of tariffs, PUC filings.**

The Company shall file with the City, and keep up to date, all tariffs, rules, regulations and policies approved by the PUC relating to service by the Company to the City and its residents and businesses. The Company shall provide the City with copies of all filings affecting said service which it makes with the PUC. In addition, the COMPANY will provide the City, at the City's request, copies of all work papers, annual reports, advice letters, prefiled testimony and all exhibits and other information relevant to the Company's application or proposal before the PUC. (Ord. 1196 (part), 1985)

**Sec. 5-80-260. Detailed bills.**

All bills or invoices sent to the City by the Company shall include lists of account numbers and items metered, and they shall specify the type of account for which charges are made; i.e., electric and gas service, street lighting, traffic signal, general office, spotlighting, etc. The company shall provide the City every two (2) years with a complete listing of all the City's accounts. (Ord. 1196 (part), 1985)

## *Division 5. City Use of Company Facilities*

### **Sec. 5-80-270. City use.**

The City shall be permitted to make all reasonable use for City purposes of any gas and electrical distribution or transmission system property of the Company, including underground facilities, without cost, provided that such use does not unreasonably interfere with the use of such systems for distribution of gas and electrical energy or create an unreasonable hazard. Such use may include, by way of explanation but not by way of limitation, the attachment of traffic control signs, fire alarm or police signal systems or the attachment of cables for transmitting television or radio signals, or any other use of the system or any part thereof. The Company shall not be responsible for any modifications to the system or for payment of any costs necessitated by such use. (Ord. 1196 (part), 1985)

### **Sec. 5-80-280. Underground conduit.**

In addition to the rights given the City in Section 5-80-270, whenever the Company installs new conduits or replaces existing conduits, the Company shall provide adequate advance notice to permit additional installation of City conduit. If the City wants additional conduit installed, it will so notify the Company and timely provide conduit at its expense to the Company, which will install-it without further cost to the City. The City and the Company shall cooperate to minimize installation costs of underground conduit and to minimize cutting the streets. (Ord. 1196 (part), 1985; Ord. 1589, 1999)

### **Sec. 5-80-290. Use of land and water facilities.**

For all land and water facilities lying within the City which are presently owned or are subsequently acquired by the Company, the Company shall permit such land and water facilities to be used by the public for recreational and open space use to the extent that such use does not interfere with the Company's use of such land and water facilities and is safe for public use. (Ord. 1196 (part), 1985)

### **Sec. 5-80-300. Right of first refusal.**

If the Company, at any time during the term of this franchise, proposes to sell or dispose of any of its real property lying within the City, or used in whole or in part for service to the City, the City shall have the right of first refusal to purchase such property. The Company shall give written notice of its intent to sell and the property shall be offered to the City for the price contained in any bona fide offer from a third party which is acceptable to the Company. The City shall have sixty (60) days after notice of receipt by the Company of such bona fide offer in which to exercise the right of first refusal, and shall exercise such right by giving written acceptance of the Company's offer within the sixty-day period. This provision shall not restrict the rights of the City to purchase or condemn the Company's facilities reserved under Division 9 of this Article. (Ord. 1196 (part), 1985)

### **Sec. 5-80-310. Use by City franchisees.**

The Company shall permit use of Company facilities by other grantees of City franchises so long as such grantees are not in competition with the Company, and so long as such grantees obtain the permission of the City and pay to the City its appropriate fees, if any. (Ord. 1196 (part), 1985)

**Sec. 5-80-320. Annexation to City.**

When any property owned by the Company becomes eligible for voluntary annexation to the City, the Company shall petition to annex the same upon request made by the City, provided that no condition of such annexation shall impair the Company's ownership or then-existing use of its property and water or water rights for public utility purposes. Except as herein provided, the Company agrees to meet all terms and conditions imposed upon the annexation by the City that are no more stringent than those imposed generally upon property owners seeking annexation of their land to the City. The Company shall be exempted from a public donation of land, money or water rights arising from such mandatory annexation under this Section to the extent that the land being annexed is committed, dedicated and being fully utilized by facilities directly involved in generating, transmitting or distributing electric energy or gas services under this Article, and provided further that said exemption from public donation shall not extend to any unimproved land or land not so directly committed, dedicated and currently used. (Ord. 1196 (part), 1985)

*Division 6. Indemnification of City*

**Sec. 5-80-330. City held harmless.**

The Company shall construct, maintain and operate its plant, equipment, pipelines, poles, wires, mains, pipes, structures and other facilities in a manner which provides reasonable protection against injury or damage to persons or property; provided, however, that said obligation of the Company hereunder shall not increase or decrease its liability on third party claims; and provided further that the Company's obligation to the City hereunder shall not be diminished by said exception. The Company shall save the City harmless and indemnify the City from and against all liability or damage and all claims or demands whatsoever in nature filed by third parties, as well as reimburse the City for its reasonable expenses incurred in negotiation for or arising from the grant of this franchise (except any consultant fees incurred in the negotiations for this franchise), the operations of the Company within the City and the exercise by the Company of the franchise rights granted in this Article, including any third party claims, administrative hearings and litigation, as well as costs arising from conferences and advice relative to said hearings and litigation. In the event the City institutes litigation against the Company for a breach of this Article, or for an interpretation of the Article, and the City is the prevailing party, the Company shall reimburse the City for all costs related thereto, including reasonable attorneys' fees. (Ord. 1196 (part), 1985)

**Sec. 5-80-340. Notice to Company.**

The City will provide notice to the Company of the pendency of any claim or action against the City arising out of the exercise by the Company of its franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. (Ord. 1196 (part), 1985)

**Sec. 5-80-350. Financial responsibility.**

At the time of the execution of the ordinance codified in this Article, and from time to time at the City's request, the Company shall provide the City with proof of its ability to meet its obligations under this Article, including its ability to indemnify the City as required by this Division. This proof may take the form of insurance coverage, adequate funding of self-insurance or the provision of a bond. The Company shall supply the City with a list of its insurance companies with the types of coverage,

not levels, of insurance. Said list shall be kept current by semi-annual revisions as of January 1 and July 1 during the term of this franchise. The City may require, from time to time, and the Company agrees to provide, additional funding of the Company's indemnification obligations as self-insured. (Ord. 1196 (part), 1985)

**Sec. 5-80-360. Breach of contract.**

In the event the Company fails to fulfill any of the obligations under this Article, the City will have a breach of contract claim against the Company, in addition to any other remedy provided by law. (Ord. 1196 (part), 1985)

*Division 7. Undergrounding of Company Distribution Facilities*

**Sec. 5-80-370. Underground distribution lines in new areas.**

The Company will place underground newly constructed electric distribution lines within, bordering or needed to serve newly developed areas within the City in accordance with the Company's tariffs and as required by subdivision and other regulations adopted by the City or other proper authority. (Ord. 1196 (part), 1985)

**Sec. 5-80-380. Overhead conversion at Company expense.**

(a) To assist in the development of a program to underground existing overhead electric distribution lines, the Company agrees to budget and allocate an annual amount, equivalent to at least one percent (1%) of the preceding year's electric revenues derived from customers within the City for the purpose of undergrounding its overhead distribution facilities in the City, at the expense of the Company, in connection with the public projects to be undertaken by the City. *Public projects* shall be those public improvement programs undertaken where the replacement of the Company's existing overhead distribution lines (including feeder lines) with underground distribution facilities is determined by the City to be in the general public interest.

(b) Any unexpended portion of the one percent (1%) of electric revenue may be carried over to succeeding years and, in addition, upon request by the City, the Company agrees to anticipate amounts to be available for up to three (3) years in advance to be used to underground its overhead distribution facilities in such public projects mutually agreed to with the City. Any amounts so advanced shall be credited against amounts to be expended in succeeding years until such advance is eliminated.

(c) Funds to be expended pursuant to this Section shall not be used in any project or situation for which and to such extent there are funds otherwise available to utilities, but shall rather be used in projects and situations for which no federal or state funds are available; provided, however, that there shall be no limitation on the use of funds for "matching" purposes with state or federal moneys.

(d) If, during the term of this franchise, the Company should receive the authority of the PUC to undertake a system-wide program or programs of undergrounding its electric distribution facilities, the Company will budget and allocate to the program of undergrounding in the City such amount as may be determined and approved by the PUC, but in no case shall such amount be less than one percent (1%) of annual electric revenues as hereinabove provided. (Ord. 1196 (part), 1985)



**Sec. 5-80-390. Review of undergrounding program.**

Representatives of both the City and the Company shall meet periodically to review the Company's undergrounding program. This review shall include:

- (1) Undergrounding programs, including conversions, public projects and replacements, which have been accomplished or are underway by the Company, together with the Company's plans for additional undergrounding;
- (2) The status of technology in the field of electric undergrounding;
- (3) Construction, operation and maintenance costs of underground lines versus overhead lines;
- (4) Public projects anticipated by the City.

Such meetings shall be held to achieve a continuing program for the orderly undergrounding of electrical lines in the City. The Company shall make substantial progress during the term of this franchise in putting underground its electric distribution lines throughout the City. (Ord. 1196 (part), 1985)

**Sec. 5-80-400. Cooperation with other utilities.**

The City and the Company shall, when undertaking a project of undergrounding, work with other utilities or companies which have their lines overhead to have all lines undergrounded as part of the same project. When other utilities or companies are placing their lines underground, the Company shall cooperate with these utilities and companies and undertake to underground Company facilities as part of the same project where feasible. (Ord. 1196 (part), 1985)

*Division 8. Transfer of Franchise*

**Sec. 5-80-410. Consent of City required.**

The Company shall not sell or transfer its plant or system to or merge with another, nor transfer, lease or permit the use of any rights under this franchise to another, by stock exchange or otherwise, excepting only corporate reorganization of the Company not involving a third party, unless the City shall approve in writing such sale, transfer, merger, stock exchange, lease, permit or other change in ownership or use of the rights herein created. Approval of the sale, transfer, merger, stock exchange, lease, permit or other change in ownership or use of said right shall not be unreasonably withheld. (Ord. 1196 (part), 1985)

*Division 9. Purchase or Condemnation*

**Sec. 5-80-420. City's right to purchase or condemn.**

The right of the City to construct, purchase or condemn any public utility works or ways, as provided by the Colorado Constitution and Statutes, is hereby expressly reserved. The City shall have the right to purchase or condemn all or part of the Company's facilities within or without the City limits, and to the extent authorized by law portions of gas supply or power purchase contracts serving

the City's metropolitan area. The City shall have the option to purchase or condemn these facilities and/or contracts at any time during the term of the ordinance codified in this Article, upon ninety (90) days' written notice to the Company or within ninety (90) days of the termination date of the ordinance codified in this Article. (Ord. 1196 (part), 1985)

**Sec. 5-80-430. Negotiated purchase price or condemnation award.**

Upon the exercise of the City's option to purchase, the parties shall negotiate in good faith to determine a mutually acceptable purchase price. No value shall be given to the franchise or to rights-of-way. At the option of the City, the parties shall establish a mutually acceptable payment schedule which may extend over a number of years. The City is not obligated to make payment in full of the purchase price prior to the acceptance of ownership. If the City and the Company cannot reach agreement as to the purchase price or acceptable payment terms within ninety (90) days after commencement of negotiations, the City may commence condemnation proceedings, and each party shall have the rights provided by law relating to condemnation; provided, however, that no award shall be made for the value of the franchise or rights-of-way. (Ord. 1196 (part), 1985)

**Sec. 5-80-440. Continued cooperation by Company.**

In the event the City exercises its option to purchase or condemn, the Company agrees that it will continue to supply any service it supplies under this Article, in whole or part, at the City's request, for the duration of the term of the ordinance codified in this Article. The Company's facilities shall be available for continued service until nine (9) months after a final order is entered in a condemnation proceeding or the effective date of a purchase agreement between the parties; provided, however, that said obligation to maintain the facilities shall not exceed a twenty-four-month period after the termination of the franchise. The Company shall continue to provide service pursuant to the terms of this Article for said twenty-four (24) months until the City has either purchased or condemned the Company's facilities or alternative arrangements have been made to supply gas or electric power to the City and its residents, whichever date shall earlier occur. The City shall not pay for any services no longer required. The Company shall cooperate with the City by making available then existing pertinent Company records which are not confidential to enable the City to evaluate the feasibility of acquisition by the City of Company facilities. The Company shall not be obligated to conduct studies or accrue data without reimbursement by the City, but will make such studies if reimbursed its costs for the same. The Company shall take no action which could inhibit the City's ability to effectively or efficiently use the acquired systems. At the City's request, the Company shall supply gas and electric power for use by the City in the City-owned system. In addition, if the City purchases the Company's system, the Company shall not compete with the City in the provision of gas or electric service within the City, as its boundaries exist at the time of purchase for a period of fifty (50) years from the date of purchase by the City. (Ord. 1196 (part), 1985)

*Division 10. Removal of Company Facilities at End of Franchise*

**Sec. 5-80-450. Limitations on Company removal.**

If, at the time of termination of the franchise granted under this Article, no renewal has been negotiated between the City and the Company, the Company shall not be required to remove its facilities immediately from the streets, public ways and dedicated easements. At the City's request and within a reasonable time not to exceed nine (9) months, the Company shall remove at the Company's

expense from the public streets, ways and dedicated easements all overhead facilities belonging to the Company which are not purchased by the City at the termination of the franchise. Further, the Company, at the request of the City, shall remove at the Company's expense all underground facilities which are not purchased by the City within nine (9) months after the receipt by the Company of a written notice from the Director of Public Works that said underground facilities constitute a hazardous condition or interfere with a municipal use of the subsurface of said streets, ways and dedicated easements. All public property shall be restored by the Company to its former condition after said removal. The Company need not remove any property from said public streets, ways and dedicated easements which it shall continue to use and maintain pursuant to contractual arrangements with the City. (Ord. 1196 (part), 1985)

#### *Division 11. Small Power Production and Cogeneration*

##### **Sec. 5-80-460. Company to purchase City-generated energy.**

(a) The City expressly reserves the right to engage in the production of electric energy from cogeneration and small power production (City-generated power and energy). The Company agrees to purchase such City-generated power and energy from facilities meeting the qualifications for mandatory purchase under present federal and state law and regulations so long as so required and thereafter if such power and energy is usable by Company with respect to its system load and reserve capacity.

(b) If at the time the purchase contract is made, the PUC declines to determine the Company's avoided costs, the purchase price for City-generated power and energy shall be determined by whatever state or federal agency has jurisdiction for making such determination, and if no agency has such jurisdiction, the rate to be paid for such power and energy will be based upon the Company's cost at its base load generating plant operating at eighty percent (80%) monthly capacity factor, adjusted for the availability of the power and energy to be purchased, and the Company's ability to make a use of the power and energy beneficial to it and its ratepayers.

(c) Payment for generated power and energy shall be guaranteed over the term of the purchase contract. (Ord. 1196 (part), 1985)

##### **Sec. 5-80-470. Interconnection.**

To facilitate the purchase of City-generated power and energy, the Company shall interconnect with all City-owned generation. The Company will construct, own and maintain the interconnection and/or any upgrade of the Company's existing interconnection facilities at the City's expense, provided that the cost paid by the City shall be a contribution in aid of construction as to said interconnection facilities. (Ord. 1196 (part), 1985)

##### **Sec. 5-80-480. Curtailment.**

The Company shall not curtail contractual purchases of City-generated power and energy except in emergency situations. (Ord. 1196 (part), 1985)

**Sec. 5-80-490. Enforceability.**

The Company shall be obligated to purchase City-generated power and energy at the rates as herein defined for the entire length of the contract term irrespective of changes in federal or state legislation or administrative rulings with regard to cogeneration and small power production. (Ord. 1196 (part), 1985)

*Division 12. Forfeiture*

**Sec. 5-80-500. Forfeiture.**

If the Company fails to perform any of the terms or conditions of this Article, the City shall notify the Company. In the notice, the City shall specify the time, not to exceed three (3) months, in which the Company must remedy the violations. If, after such time corrective actions have not been successfully taken, the City shall determine whether any or all rights and privileges granted the Company under this franchise shall be forfeited. (Ord. 1196 (part), 1985)

**Sec. 5-80-510. Continued obligations.**

Upon forfeiture, the Company shall continue to provide service to this City and its residents until the City makes alternative arrangements for such service. If the Company fails to provide continued service, it shall be liable for all actual and consequential damages to the City and its residents. (Ord. 1196 (part), 1985)

*Division 13. Amendments*

**Sec. 5-80-520. Amendment to franchise.**

At any time during the term of this franchise, the City, through its City Council, or the Company may propose amendments to this franchise by giving thirty (30) days' written notice to the other of the proposed amendments desired, and both parties thereafter, through their designated representatives, will within a reasonable time negotiate in good faith in an effort to agree upon mutually satisfactory amendments. The word *amendment* as used in this Section does not include a change in franchise fee or other franchise term authorized in Section 5-80-60. (Ord. 1196 (part), 1985)

*Division 14. Miscellaneous*

**Sec. 5-80-530. Successors and assigns.**

The rights, privileges, franchises and obligations granted and contained in this Article shall inure to the benefit of and be binding upon Public Service Company of Colorado, its successors and assigns, and subsidiaries. Whenever in this Article the word *Company* is used, it shall be deemed to refer and apply to Public Service Company of Colorado, its successors and assigns. (Ord. 1196 (part), 1985)

**Sec. 5-80-540. Representatives.**

Both parties shall designate from time to time in writing representatives for the Company and the City, who will be the persons to whom notices shall be sent regarding any action to be taken under this

Article. Notices shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the names and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent to the City Manager and to the Company's Platte Valley manager. The addresses are as follows:

For the City:

City Manager  
City of Brighton  
22 South Fourth Avenue  
Brighton, CO 80601

For the Company:

Platte Valley Division Manager  
Public Service Company of Colorado  
P. O. Box 158  
Brighton, CO 80601

(Ord. 1196 (part), 1985; Ord. 1723 §4, 2001)

**Sec. 5-80-550. Severability.**

Should any one (1) or more provisions of this Article be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, that the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term that will achieve the original intent of the parties hereunder. (Ord. 1196 (part), 1985)

**Sec. 5-80-560. Entire agreement.**

This Article constitutes the entire agreement of the parties. There have been no representations made other than those contained in this Article. (Ord. 1196 (part), 1985)

**ARTICLE 5-84**

**Franchise for Electricity to Union Rural Electric Association, Inc.**

*Division 1. Grant of Franchise*

**Sec. 5-84-10. Grant of franchise.**

The City of Brighton (the "City") grants to Union Rural Electric Association, Inc. (the "Company"), for the period of and subject to the conditions, terms and provisions contained in this Article, a nonexclusive right to furnish and sell electricity to the City and to all persons, businesses and industry (hereinafter collectively referred to as "residents") in the Company's hereafter described service areas within the City. Subject to the conditions, terms and provisions contained in this Article, the City also grants to the Company an electrical energy (electricity) nonexclusive right to construct, install, maintain and operate all facilities reasonably necessary to provide electrical energy within the

City and a nonexclusive right to make reasonable use of the streets, alleys, bridges, viaducts, public property and public ways as may be necessary to carry out the terms of this Article. These rights shall extend to those areas of the City which are part of the Company's exclusive service areas as of February 2, 1987, as certificated by the Colorado Public Utilities Commission (hereafter "Company's service areas"). The legal description of the Company's service areas is attached to the ordinance codified in this Article as Exhibit "A." (Ord. 1328 (part), 1989)

**Sec. 5-84-20. Street lighting service.**

The rights granted in this Article encompass the nonexclusive right, duty and franchise to provide street lighting service to the City within Company's service areas and the provisions of this Article apply with full and equal force to the street lighting service provided by the Company. Wherever reference is made to the sale of electricity or to the provision of electric service in this Article, these references shall be deemed to include the provision of street lighting service. Wherever reference is made to Company facilities, equipment, system or plant in this Article, this reference shall be deemed to include Company-owned street lighting facilities, equipment, system and plant. (Ord. 1328 (part), 1989)

**Sec. 5-84-30. Term of franchise.**

The term of this franchise shall be for twenty-five (25) years, beginning on the first day of December, 1985. (Ord. 1328 (part), 1989)

*Division 2. Franchise Fee*

**Sec. 5-84-40. Franchise fee.**

In consideration for the grant of this franchise, the Company shall pay the City a sum equal to three percent (3%) of all gross revenue per year derived from the sale of electricity within the City or from gross revenues accruing to the Company from the use of its utility facilities within the City retroactive to February 2, 1987. *Gross revenue* as used herein shall mean any revenue derived under authorized temporary or permanent rates, or otherwise, from sales of electricity or use of its utility facilities within the City, after the adjustments for the net write-off of uncollectible accounts and corrections of bills theretofore rendered. In no event will the City be required to refund franchise fees previously paid by the Company, nor shall the Company deduct any refund from subsequent payments to the City duly calculated on the then-effective gross revenues. Included within *gross revenue* shall be all amounts paid to the Company by the City or any of its departments. (Ord. 1328 (part), 1989)

**Sec. 5-84-50. Payment schedule.**

For the franchise fee owed on gross revenues received after the effective date of the ordinance codified in this Article, payment shall be made in monthly installments not more than thirty (30) days following the close of the month for which payment is to be made. Initial and final payments shall be prorated for the portions of the months at the beginning and end of the term of the ordinance codified in this Article. All payments shall be made to the Director of Finance. The City Manager shall have access to the books of the Company for the purpose of auditing or checking to insure that the franchise fee has been correctly computed and paid. (Ord. 1328 (part), 1989; Ord. 1589, 1999)

**Sec. 5-84-60. Change of franchise fee and other franchise terms.**

Once during each calendar year of the franchise term the City Council, upon giving thirty (30) days' notice to the Company of its intention to do so, may review and change the consideration paid by the Company under this Article, the franchise fee or other consideration the City may be entitled to receive as part of the franchise in accordance with the following terms: The City may increase the franchise fee to equal the franchise fee paid by any other public utility supplier of electric energy within the City, or if none, to equal the franchise fee paid by Public Service Company of Colorado in any other city or the City may increase the franchise fee to equal the franchise fee paid by the Company to any other city or town in the State in which the Company supplies electric service under franchise. The Company shall report to the City within thirty (30) days of execution of a franchise or of any change of franchise in other municipalities that could have a financial impact on the consideration to be paid by the Company to the City hereunder. If the City Council decides the franchise fee or other terms shall be so changed, it shall provide for such change by ordinance. Any changed franchise fee may then be surcharged by the Company. (Ord. 1328 (part), 1989)

**Sec. 5-84-70. Franchise fee in lieu of other fees.**

So long as the Company performs its obligations under this Article, including payment of the franchise fee, the Company will be exempt from the payment of any license fees or charges to the City, but payment of the franchise fee does not exempt the Company from any lawful taxation upon its property from sales and use taxes, excavation permit fees and building permit charges, and from fees and charges for excavating for or construction of underground or overhead facilities that are uniform and generally applicable to contractors performing similar work. (Ord. 1328 (part), 1989)

**Sec. 5-84-80. Contract obligation.**

The franchise ordinance codified in this Article constitutes a valid and binding contract between the Company and the City. In the event that the franchise fee specified in this Article is declared illegal, unconstitutional or void for any reason by any court or other proper authority, the Company shall be contractually bound to pay the City, on the same schedule as proved herein for the franchise fee, an aggregate amount equal to the amount which would have been paid as a franchise fee. In addition, if the franchise fee is declared invalid, the City shall have the right to impose occupation and license fees and permit charges reasonably equivalent on an annual rate to said franchise fee. (Ord. 1328 (part), 1989)

*Division 3. Company Construction and Operation Obligations*

**Sec. 5-84-90. Adequate supply at lowest possible cost.**

The Company shall at all times take all reasonable and necessary steps to assure an adequate supply of electricity to the City and its residents at the lowest possible cost. Should electric power or energy be made available to the Company from whatever source at less cost than the cost which would be incurred by the Company to supply such power or energy from its own systems, the Company agrees to purchase this lower-cost power or energy and to pass on to the City and its residents any savings resulting from the purchase; provided however, that any savings resulting in lower costs shall not be exclusively available to consumers in the City, but as part of the general rates of the Company. If the supply of electricity to the City or its residents should be interrupted, the Company shall immediately

take all necessary and reasonable actions to restore such supply at the soonest possible time. (Ord. 1328 (part), 1989)

**Sec. 5-84-100. City approval of construction and design.**

Prior to construction of any regulator station, or any transmission lines or generating plant, building, substation or similar structure within the City, the Company shall furnish to the City the plans for such facilities, including all architectural, engineering and landscaping plans. In addition, the Company shall assess and report on the impact of its proposed construction on the City environment. Such plans and reports may be reviewed by the City to ensure: (1) that all applicable laws, including building and zoning codes and air and water pollution regulations, are complied with; (2) that aesthetic and good planning principles have been given due consideration; and (3) that adverse impact on the environment has been minimized. The Company shall comply with all regulatory requirements of the City and shall incorporate all other changes requested by the City which are agreeable to the Company. (Ord. 1328 (part), 1989)

**Sec. 5-84-110. Excavation and construction.**

The Company shall comply with all City requirements for excavation and construction and shall be responsible for obtaining all applicable permits. The City shall have the right to supervise all construction or excavation. All construction, excavation, maintenance and repair work done by the Company shall be done in a timely and expeditious way and in a manner which minimizes the inconvenience to the public or individuals. All public and private property in dedicated easements disturbed by Company construction or excavation activities shall be restored as soon as possible by the Company, at its expense, to substantially its former condition subject to inspection by the Director of Public Works and compliance by the Company with reasonable remedial action required by the Director pursuant to said inspection. The Company shall comply with the City's requests for reasonable and prompt action to remedy all damage to private property adjacent to streets or dedicated easements where the Company is performing excavation or construction work. (Ord. 1328 (part), 1989)

**Sec. 5-84-120. Installation and maintenance of Company facilities.**

The installation, maintenance, renovation and replacement of any facilities by the Company shall be subject to regulation, inspection and approval by the Director of Public Works. Such regulation shall include, but not be limited to the following matters: location of facilities in the streets, alleys and dedicated easements; cutting and trimming of trees and shrubs; and disturbance of pavement, sidewalks and surfaces of streets, alleys, dedicated easements and driveways. All Company facilities shall be installed on public or dedicated easements so as to cause a minimal amount of interference with such property. The Company facilities shall not interfere with the City's water mains, sewer mains or any other municipal use of the City's streets and rights-of-way. The Company shall erect and maintain its facilities in such a way so as to minimize interference with trees and other natural features. The Company shall keep in good working order all facilities constructed, erected or used within the City. (Ord. 1328 (part), 1989)

**Sec. 5-84-130. Warranty of Company facilities.**

The Company warrants to the City that it will install, repair, renovate and replace its facilities in a good and workmanlike manner and that the Company's facilities will be of sufficient quality and



durability to provide adequate and efficient electric service to the City and its residents. The Company will require warranties customary for the industry from its third party suppliers of transformers and other major equipment incorporated into the Company's facilities and shall fully enforce any such warranty. (Ord. 1328 (part), 1989)

**Sec. 5-84-140. Continued compliance with air and water pollution laws.**

The Company shall continue to use its best efforts to take measures which will result in its facilities meeting the standards required by applicable federal and state air and water pollution laws. Upon the City's request, the Company will provide the City with a status report of such measures. (Ord. 1328 (part), 1989)

**Sec. 5-84-150. Relocation of Company facilities.**

If at any time the City requests the Company to relocate any facility installed or maintained in streets, alleys, public rights-of-way or dedicated easements pursuant to this or previous franchises in order to permit the City to make any public use of rights-of-way, easements or streets to construct any public improvement, to build any public project or for any municipal purpose, such relocation shall be made by the Company at its expense. Following relocation, all property shall be restored to its former condition by the Company at its expense. Nothing herein contained shall be construed to impose any obligation upon the City to make any payment for any relocation of the Company's facilities, whether located within or without said designated areas. (Ord. 1328 (part), 1989)

**Sec. 5-84-160. Technological improvements.**

The Company shall introduce and install generally, as soon as practicable, electrical energy technological advances in its equipment and service in the City when such advances are technically and economically feasible, and are safe and beneficial to the City and its residents. Upon request by the City, the Company shall review and promptly report advances which have occurred in the electric utility industry that have been incorporated into the Company's operations in the City in the previous year or will be so incorporated in the next six (6) months. The Company shall report in advance to the City any plans to include technological advances relating to communications systems such as fiber optics which may utilize electric facilities already in place for the transmission of communication signals, which facilities may be installed by the Company for its use, the use of the City or use of others as the Company may license. The City may use said facilities without cost, except such additional expense which may be incurred by the Company as a result of the City's use. Upon request of the City, the Company will provide a detailed report of the use of such communications systems. Nothing contained herein shall be construed to authorize the Company to engage in telecommunications activities, nor shall this Article be construed as a franchise for said telecommunications activities within the City. (Ord. 1328 (part), 1989)

**Sec. 5-84-170. Company obligations to City.**

The Company shall protect all City property against injury which may arise out of the exercise by the Company of any rights or privileges herein granted. The Company shall be liable for any interference, damage or injury suffered by the City as a result of the exercise by the Company of any rights or privileges herein granted. This Section shall be applicable only to City and Company relationships. Nothing herein contained shall be construed to affect the liability of the Company to third party claims. (Ord. 1328 (part), 1989)

**Sec. 5-84-180. Service to new areas.**

If, during the term of this franchise, the boundaries of the City are expanded to areas certificated by the Public Utilities Commission of Colorado (*PUC*) for service by the Company, and if service is requested to that area, the Company shall extend service to residents of such areas in accordance with the Company's extension policy at the soonest practicable time. (Ord. 1328 (part), 1989)

**Sec. 5-84-190. Construction by City employees or developers.**

Subject to reasonable specifications and supervision imposed by the company, the labor forces of the City or its contractors, at the City's request, shall be used to excavate for trenching subject to the provisions of the union contract with the Company; to install landscaping and to repair streets and public ways for any capital improvements, repairs or replacements of electric service by the Company for municipal uses. At the City's request, the Company shall reimburse the City for all expenses incurred in said work; provided that said reimbursement shall not exceed the bid cost for said work; and provided further that in the event the City is not so reimbursed, the cost of said work by the City's labor forces shall not be included in operating expenses or rate base of the Company. The Company agrees to make a good faith attempt to utilize City employees on other facets of capital improvement projects serving municipal operations when feasible and so long as the City agrees to work subject to the Company's reasonable specifications and inspection and so long as the use of City employees does not violate the working agreement between the Company and any union. The Company will confer in good faith with subdivision developers with the goal of installing electric facilities within subdivisions at the lowest cost consistent with proper installation. (Ord. 1328 (part), 1989)

**Sec. 5-84-200. City not required to advance funds.**

The Company shall extend its facilities to provide electric service to the City for municipal uses within the City limits or for any major municipal facility outside the City limits and within the Company certified area without requiring the City to advance funds in aid of construction more than ten (10) days in advance of construction. (Ord. 1328 (part), 1989)

**Sec. 5-84-210. Safety regulations by City.**

The City reserves the right to adopt, from time to time, reasonable regulations in the exercise of its police power to ensure the safety, welfare and accommodation of the public. The Company agrees to comply with all such regulations in the construction, maintenance and operation of its facilities and in the provision of electricity within the City. (Ord. 1328 (part), 1989)

**Sec. 5-84-220. Compliance with PUC and Company regulations.**

The Company shall assure that the electrical energy it distributes meets with the minimum standards promulgated by the PUC, as well as the Company tariffs and regulations. The Company shall keep on file with the City copies of the PUC rules regulating the service of electric utilities, as well as the Company's own tariffs and rules and regulations as the same may be amended from time to time. The City shall have access to all records of the Company monitoring compliance with such standards. Prior to the final adoption by the City of the franchise, the Company shall adopt such amendments to its tariffs as may be necessary to make its tariff provisions compatible with the provisions of this Article, and shall report to the City any changes that have been made for this purpose. The Company shall use

its best efforts to assure the City during the term of the franchise that the tariffs of the Company shall not be in conflict with any provision of this Article. (Ord. 1328 (part), 1989; Ord. 1589, 1999)

**Sec. 5-84-230. Inspection, audit and quality control.**

The City shall have the right to inspect any portion of the Company's system used to serve the City and its residents at all reasonable times. The City shall also have the right to inspect and conduct an audit of Company records relevant to compliance with any terms of this Article at all reasonable times. The Company agrees to cooperate fully with the City in conducting the inspection and/or audit and to correct any discrepancy affecting the City's interest in a prompt and efficient manner. (Ord. 1328 (part), 1989)

*Division 4. Reports to City*

**Sec. 5-84-240. Annual report on Company operations.**

In addition to reports required with regard to franchise fees, the Company shall provide the City by March 1 of each year, an annual report which shall include the following information:

- (1) The return earned by the Company on operations for the prior calendar year, and the rate base used for calculation of such return in the form and detail required by the PUC for rate proceedings;
- (2) A list of all real property and leasehold interests in real property owned by the Company in the City, excepting dedicated and other easements;
- (3) Short-term (less than three [3] years) and long-range (over three [3] years) plans for all capital improvements, construction and excavation within the City or affecting service to the City and its residents;
- (4) Any other information which the City may reasonably from time to time request with respect to the operations of the Company under this franchise. (Ord. 1328 (part), 1989)

**Sec. 5-84-250. Copies of tariffs and approvals.**

The Company shall file with the City and keep up to date all tariffs, rules, regulations and policies approved by it relating to service by the Company to the City and its residents and businesses. The Company shall provide the City with copies of all documents affecting said service. In addition, the Company will provide the City, at the City's request, copies of all work papers, annual reports, advice letters and exhibits and other information relevant to such approvals by the Company. (Ord. 1328 (part), 1989)

**Sec. 5-84-260. Detailed bills.**

All bills or invoices sent to the City by the Company shall include lists of account numbers and items metered, and they shall specify the type of account for which charges are made, i.e., electric service, street lighting, traffic signal, general office, spot lighting, etc. The Company shall provide the City every two (2) years with a complete listing of all the City's accounts. (Ord. 1328 (part), 1989)

## *Division 5. City Use of Company Facilities*

### **Sec. 5-84-270. City use.**

The City shall be permitted to make all reasonable use for City purposes of any electrical distribution or transmission system property of the Company, including underground facilities, without cost, provided that such use does not unreasonably interfere with the use of such systems for distribution of electrical energy or create an unreasonable hazard. Such use may include, by way of explanation but not by way of limitation, the attachment of traffic control signs, fire alarm or police signal systems or the attachment of cables for transmitting television or radio signals, or any other use of the system or any part thereof. The Company shall not be responsible for any modifications to the system or for payment of any costs necessitated by such use. (Ord. 1328 (part), 1989)

### **Sec. 5-84-280. Underground conduit.**

In addition to the rights given the City in Section 5-84-270, whenever the Company installs new conduits or replaces existing conduits, the Company shall provide adequate advance notice to permit additional installation of City conduit. If the City wants additional conduit installed, it will so notify the Company and timely provide conduit at its expense to the Company which will install it without further cost to the City. The City and the Company shall cooperate to minimize installation costs of underground conduit and to minimize cutting the streets. (Ord. 1328 (part), 1989; Ord. 1589, 1999)

### **Sec. 5-84-290. Use of land and water facilities.**

For all land and water facilities lying within the City which are presently owned or are subsequently acquired by the Company, the Company shall permit such land and water facilities to be used by the public for recreational and open space use to the extent that such use does not interfere with the Company's use of such land and water facilities and is safe for public use. (Ord. 1328 (part), 1989)

### **Sec. 5-84-300. Right of first refusal.**

If the Company, at any time during the term of this franchise, proposes to sell or dispose of any of its real property lying within the City, or used in whole or in part for service to the City, the City shall have the right of first refusal to purchase such property. The Company shall give written notice of its intent to sell and the property shall be offered to the City for the price contained in any bona fide offer from a third party which is acceptable to the Company. The City shall have sixty (60) days after notice of receipt by the Company of such bona fide offer in which to exercise the right of first refusal and shall exercise such right by giving written acceptance of the Company's offer within the sixty-day period. This provision shall not restrict the rights of the City to purchase or condemn the Company's facilities reserved under Division 9 of this Article. (Ord. 1328 (part), 1989)

### **Sec. 5-84-310. Use by City franchisees.**

The Company shall permit use of Company facilities by other grantees of City franchises so long as such grantees are not in competition with the Company, and so long as such grantees obtain the permission of the City and pay to the City its appropriate fees, if any. (Ord. 1328 (part), 1989)

**Sec. 5-84-320. Annexation to City.**

When any property owned by the Company becomes eligible for voluntary annexation to the City, the Company shall petition to annex the same upon request made by the City, provided that no condition of such annexation shall impair the Company's ownership or then-existing use of its property and water or water rights for public utility purposes. Except as herein provided, the Company agrees to meet all terms and conditions imposed upon the annexation by the City that are no more stringent than those imposed generally upon property owners seeking annexation of their land to the City. The Company shall be exempted from a public donation of land, money or water rights arising from such mandatory annexation under this Section to the extent that the land annexed is committed, dedicated and being fully utilized by facilities directly involved in generating, transmitting or distributing electric energy services under this Article, and provided further that said exemption from public donation shall not extend to any unimproved land or land not so directly committed, dedicated and currently used. (Ord. 1328 (part), 1989)

*Division 6. Indemnification of City*

**Sec. 5-84-330. City held harmless.**

The Company shall construct, maintain and operate its plant, equipment, poles, wires, structures and other facilities in a manner which provides reasonable protection against injury or damage to persons or property; provided, however, that said obligation of the Company hereunder shall not increase or decrease its liability on third party claims; and provided further that the Company's obligation to the City hereunder shall not be diminished by said exception. The Company shall save the City harmless and indemnify the City from and against all liability or damage and all claims or demands whatsoever in nature filed by third parties, as well as reimburse the City for its reasonable expenses incurred in negotiation for or arising from the grant of this franchise (except any consultant's fees incurred in the negotiations for this franchise), the operations of the Company within the City and the exercise by the Company of the franchise rights granted in this Article, including any third party claims, administrative hearings and litigation, as well as costs arising from conferences and advice relative to said hearings and litigation. In the event the City institutes litigation against the Company for a breach of this Article and for an interpretation of the Article, and the City is the prevailing party, the Company shall reimburse the City for all costs related thereto, including reasonable attorney's fees. (Ord. 1328 (part), 1989)

**Sec. 5-84-340. Notice to Company.**

The City will provide notice to the Company of the pendency of any claim or action against the City arising out of the exercise by the Company of its franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. (Ord. 1328 (part), 1989)

**Sec. 5-84-350. Financial responsibility.**

At the time of the execution of this Article, and from time to time at the City's request, the Company shall provide the City with proof of its ability to meet its obligations under this Article, including its ability to indemnify the City as required by this Division. This proof may take the form of insurance coverage, adequate funding of self-insurance or the provision of a bond. Company shall supply the City with a list of its insurance companies with the types of coverage, not levels, of insurance. Said list

shall be kept current by semiannual revisions as of January 1 and July 1 during the term of this franchise. The City may require, from time to time, and the Company agrees to provide, additional funding of the Company's indemnification obligations as self-insured. (Ord. 1328 (part), 1989)

**Sec. 5-84-360. Breach of contract.**

In the event the Company fails to fulfill any of the obligations under this Article, the City will have a breach of contract claim against the Company, in addition to any other remedy provided by law. (Ord. 1328 (part), 1989)

*Division 7. Undergrounding of Company Distribution Facilities*

**Sec. 5-84-370. Underground distribution lines in new areas.**

The Company will place underground newly constructed electric distribution lines within, bordering or needed to serve newly developed areas within the City in accordance with the Company's tariffs and as required by subdivision and other regulations adopted by the City or other proper authority. (Ord. 1328 (part), 1989)

**Sec. 5-84-380. Overhead conversion at Company expense.**

The Company shall develop a program to underground existing overhead electric distribution lines in order to complete such program according to a reasonable completion schedule not to exceed ten (10) years. (Ord. 1328 (part), 1989)

**Sec. 5-84-390. Review of underground program.**

Representatives of both the City and the Company shall meet periodically to review the Company's undergrounding program. This review shall include:

- (1) Undergrounding programs, including conversions, public projects and replacements, which have been accomplished or are underway by the Company, together with the Company's plans for additional undergrounding;
- (2) The status of technology in the field of electric undergrounding;
- (3) Construction, operation and maintenance costs of underground lines versus overhead lines; and
- (4) Public projects anticipated by the City.

Such meetings shall be held to achieve a continuing program for the orderly undergrounding of electrical lines in the City. The Company shall make substantial progress during the ten-year schedule for putting underground its existing electric distribution lines throughout the City. All newly installed distribution lines shall be placed underground unless otherwise approved by the City Council. (Ord. 1328 (part), 1989)

**Sec. 5-84-400. Cooperation with other utilities.**

The City and the Company shall, when undertaking a project of undergrounding, work with other utilities or companies which have their lines overhead to have all lines undergrounded as part of the same project. When other utilities or companies are placing their lines underground, the Company shall cooperate with these utilities and companies and undertake to underground Company facilities as part of the same project where feasible. (Ord. 1328 (part), 1989)

*Division 8. Transfer of Franchise*

**Sec. 5-84-410. Consent of City required.**

The Company shall not sell or transfer its plant or system to merge with another, nor transfer, lease or permit the use of any rights under this franchise to another, by stock exchange or otherwise, excepting only corporate reorganization of the Company not involving a third party, unless the City shall approve in writing such sale, transfer, merger, stock exchange, lease, permit or other change in ownership or use of the rights herein created. Approval of the sale, transfer, merger, stock exchange, lease, permit or other change in ownership or use of the rights herein created. (Ord. 1328 (part), 1989)

*Division 9. Purchase or Condemnation*

**Sec. 5-84-420. City's right to purchase or condemn.**

The right of the City to construct, purchase or condemn any public utility works or ways, as provided by the Colorado Constitution and Statutes, is hereby expressly reserved. The City shall have the right to purchase or condemn all or part of the Company's facilities within or without the City limits, and to the extent authorized by law, portions of power purchase contracts serving the City's metropolitan area. The City shall have the option to purchase or condemn these facilities and/or contracts at any time during the term of this Article, upon ninety (90) days' written notice to the Company or within ninety (90) days of the termination date of this Article. (Ord. 1328 (part), 1989)

**Sec. 5-84-430. Negotiated purchase price condemnation award.**

Upon the exercise of the City's option to purchase, the parties shall negotiate in good faith to determine a mutually acceptable purchase price. No value shall be given to the franchise or to rights-of-way. At the option of the City, the parties shall establish a mutually acceptable payment schedule which may extend over a number of years. The City is not obligated to make payment in full of the purchase price prior to the acceptance of ownership. If the City and the Company cannot reach agreement as to the purchase price or acceptable payment terms within ninety (90) days after commencement of negotiations, the City may commence condemnation proceedings, and each party shall have the rights provided by law relating to condemnation; provided, however, that no award shall be made for the value of the franchise or rights-of-way. (Ord. 1328 (part), 1989)

**Sec. 5-84-440. Continued cooperation by Company.**

In the event the City exercises its option to purchase or condemn, the Company agrees that it will continue to supply any service it supplies under this Article, in whole or part, at the City's request, for the duration of the term of this Article. The Company's facilities shall be available for continued

service until nine (9) months after a final order is entered in a condemnation proceeding or the effective date of a purchase agreement between the parties; provided, however, that said obligation to maintain the facilities shall not exceed a twenty-four-month period after the termination of the franchise. The Company shall continue to provide service pursuant to the terms of this Article for said twenty-four (24) months until the City has either purchased or condemned the Company's facilities or alternative arrangements have been made to supply electric power to the City and its residents, whichever date shall earlier occur. The City shall not pay for any services no longer required. The Company shall cooperate with the City by making available then-existing pertinent Company records which are not confidential to enable the City to evaluate the feasibility of acquisition by the City of Company facilities. The Company shall not be obligated to conduct studies or accrue data without reimbursement by the City, but will make such studies if reimbursed its costs for the same. The Company shall take no action which could inhibit the City's ability to effectively or efficiently use the acquired systems. At the City's request, the Company shall supply electric power for use by the City in the City-owned system. In addition, if the City purchases the Company's system, the Company shall not compete with the City in the provision of electric service within the City, as its boundaries exist at the time of purchase for a period of fifty (50) years from the date of purchase by the City. (Ord. 1328 (part), 1989)

#### *Article 10. Removal of Company Facilities at End of Franchise*

##### **Sec. 5-84-450. Limitations on Company removal.**

If at the time of termination of the franchise granted under this Article no renewal has been negotiated between the City and the Company, the Company shall not be required to remove its facilities immediately from the streets, public ways and dedicated easements. At the City's request and within a reasonable time not to exceed nine (9) months, the Company shall remove at the Company's expense from the public streets, ways and dedicated easements all overhead facilities belonging to the Company which are not purchased by the City at the termination of the franchise. Further, the Company, at the request of the City, shall remove at the Company's expense all underground facilities which are not purchased by the City within nine (9) months after the receipt by the Company of a written notice from the Director of Public Works that said underground facilities constitute a hazardous condition or interfere with a municipal use of the subsurface of said streets, ways and dedicated easements. All public property shall be restored by the Company to its former condition after said removal. The Company need not remove any property from said public streets, ways and dedicated easements which it shall continue to use and maintain pursuant to contractual arrangements with the City. (Ord. 1328 (part), 1989)

#### *Division 11. Small Power Production and Cogeneration*

##### **Sec. 5-84-460. Company to purchase City-generated energy.**

(a) The City expressly reserves the right to engage in the production of electric energy from cogeneration and small power production (City-generated power and energy). The Company agrees to purchase such City-generated power and energy from facilities meeting the qualifications for mandatory purchase under present federal and state law and regulations so long as so required and thereafter if such power and energy is usable by the Company with respect to its system load and reserve capacity.



(b) If at the time the purchase contract is made, the PUC declines to determine the Company's avoided costs, the purchase price for City-generated power and energy shall be determined by whatever state or federal agency has jurisdiction for making such determination, and if no agency has such jurisdiction, the rate to be paid for such power and energy will be based upon the Company's cost at its base load generating plant operating at eighty-percent monthly capacity factor, adjusted for the availability of the power and energy to be purchased, and the Company's ability to make a use of the power and energy beneficial to it and its ratepayers.

(c) Payment for generated power and energy shall be guaranteed over the term of the purchase contract. (Ord. 1328 (part), 1989)

**Sec. 5-84-470. Interconnection.**

To facilitate the purchase of City-generated power and energy, the Company shall interconnect with all City-owned generation. The Company will construct, own and maintain the interconnection and/or any upgrade of the Company's existing interconnection facilities at the City's expense, provided that the cost paid by the City shall be a contribution in aid of construction as to said interconnection facilities. (Ord. 1328 (part), 1989)

**Sec. 5-84-480. Curtailment.**

The Company shall not curtail contractual purchases of City-generated power and energy except in emergency situations. (Ord. 1328 (part), 1989)

**Sec. 5-84-490. Enforceability.**

The Company shall be obligated to purchase City-generated power and energy at the rates as herein defined for the entire length of the contract term, irrespective of changes in federal or state legislation or administrative rulings with regard to cogeneration and small power production. (Ord. 1328 (part), 1989)

*Division 12. Forfeiture*

**Sec. 5-84-500. Forfeiture.**

If the Company fails to perform any of the terms or conditions of this Article, the City shall notify the Company. In the notice, the City shall specify the time, not to exceed three (3) months, in which the Company must remedy the violations. If after such time corrective actions have not been successfully taken, the City shall determine whether any or all rights and privileges granted the Company under this franchise shall be forfeited. (Ord. 1328 (part), 1989)

**Sec. 5-84-510. Continued obligations.**

Upon forfeiture, the Company shall continue to provide service to this City and its residents until the City makes alternative arrangements for such service. If the Company fails to provide continued service, it shall be liable for all actual and consequential damages to the City and its residents. (Ord. 1328 (part), 1989)

*Division 13. Amendments*

**Sec. 5-84-520. Amendment to franchise.**

At any time during the term of this franchise, the City, through its City Council, or the Company may propose amendments to this franchise by giving thirty (30) days' written notice to the other of the proposed amendments desired, and both parties thereafter, through their designated representatives, will within a reasonable time negotiate in good faith in an effort to agree upon mutually satisfactory amendments. The word *amendment* as used in this Section does not include a change in franchise fee or other franchise term authorized in Section 5-84-60. (Ord. 1328 (part), 1989)

*Division 14. Miscellaneous*

**Sec. 5-84-530. Successors and assigns.**

The rights, privileges, franchises and obligations granted and contained in this Article shall inure to the benefit of and be binding upon Union Rural Electric Association, Inc., its successors and assigns, and subsidiaries; and whenever in this Article the word *Company* is used, it shall be deemed to refer and apply to Union Rural Electric Association, Inc., its successors and assigns. (Ord. 1328 (part), 1989)

**Sec. 5-84-540. Representatives.**

Both parties shall designate from time to time, in writing, representatives for the Company and the City, who will be the persons to whom notices shall be sent regarding any action to be taken under this Article. Notices shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the names and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent to the City Manager and to the Company's general manager. The addresses are as follows:

For the City:

City Manager  
City of Brighton  
22 South Fourth Avenue  
Brighton, CO 80601

For the Company:

General Manager  
Union Rural Electric Association, Inc.  
P. O. Box 929  
Brighton, CO 80601

(Ord. 1328 (part), 1989; Ord. 1723 §5, 2001)

**Sec. 5-84-550. Severability.**

Should any one or more provisions of this Article be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided however, that the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term that will achieve the original intent of the parties hereunder. (Ord. 1328 (part), 1989)

**Sec. 5-84-560. Entire agreement.**

This Article constitutes the entire agreement of the parties. There have been no representations made other than those contained in this Article. (Ord. 1328 (part), 1989)

**ARTICLE 5-90**

**Group Homes**

**Sec. 5-90-10. Definitions.**

The following words and phrases as used in this Article shall be construed and defined as follows:

(1) *Group home* means a residence that is operated to provide supervision and other services for four (4) to eight (8) individuals who are developmentally disabled (as defined in Section 31-23-103(4), C.R.S.), mentally ill or sixty (60) years of age or older, or persons with handicaps as defined by 42 U.S.C. §3601 and Section 24-34-103(4), C.R.S., and who are not related to the owner of the residence by blood, marriage or adoption. A foster care home with more than four (4) foster children is also considered a group home. Except as specifically provided by this Code, a group home shall not house more than one (1) individual per dwelling who is required to register as a sex offender under the provisions of Section 18-3-412.5, C.R.S., as amended.

(2) *Group home administrator* means an individual with the authority and responsibility for the day-to-day management of a group home. (Ord. 1391 §1(part), 1991; Ord. 1589, 1999; Ord. 1639 §2, 2000)

**Sec. 5-90-20. License required.**

Any person, corporation, partnership or other entity owning and operating property and improvements within the City operated as a group home shall be required to obtain and maintain a license from the City and pay the applicable license fee. Any group home currently operating under a valid county or state license as of the effective day of the ordinance codified in this Article shall have a period of thirty (30) days to apply for a license and ninety (90) days within which to obtain a license. Application for such license shall be made to the City Clerk's office upon a form to be supplied by the City Clerk consistent with the terms of this Section. (Ord. 1391 §1(part), 1991; Ord. 1589, 1999; Ord. 1597 §1, 1999)

**Sec. 5-90-30. License and operation, age requirement.**

No person shall be licensed hereunder or authorized to act as a group home administrator who has not attained the age of twenty-one (21) years. (Ord. 1391 §1(part), 1991; Ord. 1589, 1999)

**Sec. 5-90-40. Contents of application.**

The application for a group home license shall contain the following information:

- (1) Name and address of the applicant, and if a natural person or persons, age, date and place of birth (applicants include all owners of the property and the persons or entity who will be actually operating the facility);
- (2) Telephone number of applicants for contact day or night;
- (3) If a corporation, the names of directors, officers and shareholders and date and place of incorporation;
- (4) If a partnership or other entity, names and addresses of all persons who are members of the partnership or entity;
- (5) A list of all civil judgments or criminal convictions for the five (5) years preceding the application involving the persons listed above. Traffic infractions need not be listed;
- (6) Documents that shall be attached to the application are:
  - a. Copies of all licenses of any nature held by any applicant, pertaining to the operation of a group home;
  - b. Proof of ownership and/or right to possession (if the operator not the owner);
  - c. A plan of operation including a general description of the type of group home proposed and the facilities and care to be provided; the number of occupants; the hours of operation and staffing; a descriptive floor plan specifying all area uses, with fire control and fire evacuation notations and descriptions; a description of special care requirements and/or equipment of the group home or occupants; a plan for secure storage of drugs, if any; and a description of general supervision provisions;
- (7) Identification of the group home administrators, night and day telephone numbers and dates of birth. (Ord. 1391 §1(part), 1991; Ord. 1597 §2, 1999)

**Sec. 5-90-45. Coordination, monitoring.**

The City Clerk's office shall be primarily responsible for coordinating with the applicant in the licensing process, approving the initial plan of operation, and amendments, and monitoring the licensee's compliance with all required standards. All completed applications shall be submitted to the City Council by the City Clerk for issuance or denial. Denials may be appealed pursuant to Rule 106 C.R.C.P. to the Adams County District Court. (Ord. 1391 §1(part), 1991; Ord. 1597 §3, 1999)

**Sec. 5-90-50. Investigation, eligibility.**

The City Clerk shall forward the application to the Planning Department for its review. The Planning Department shall confirm, by approval signature, that the location of the proposed group home is a permitted use under the City's Zoning Code, that it is not within seven hundred fifty (750) feet of another licensed group home, and that it satisfies the definition of a *group home* as set forth in

the City's Zoning Code. The application shall then be forwarded to the Public Works, Police and Building Departments and the Fire District for a determination of compliance and the eligibility of the proposed property for group home use under health, safety, fire and building codes. Persons, entities or entities controlled by persons who have been convicted of crimes of moral turpitude (or other crimes affecting their ability to care for and supervise others), or adjudged negligent in the care of other persons, shall not be eligible to hold a group home license or be a group home administrator. (Ord. 1391 §1(part), 1991; Ord. 1597 §4, 1999)

**Sec. 5-90-60. Conformity of structure.**

In order to obtain and maintain a license, the structures for group homes used must be consistent with the massing, roof types, materials and character of the surrounding neighborhood, and any alterations or additions shall retain such consistency. (Ord. 1391 §1(part), 1991)

**Sec. 5-90-70. License, special requirements.**

(a) Owners and operators of residential facilities for the aged, persons with developmental disabilities and persons with mental illness (i.e., group home owners and operators) must comply with all applicable zoning regulations of the City. When an application for a state license to operate such a residential facility within the jurisdictional limits of the City is filed with the State, the owner or operator shall also at that time provide to the City Planning and Community Development Department written notice of its intent to locate and operate within the City, and shall again provide similar written notice when the state license is granted, changed, revoked or renewed by the State.

(b) As a condition of the issuance of a license hereunder, the City may specify special requirements of obtaining and maintaining the license, due to unique or exceptional circumstances, which are reasonably related to the health, safety and welfare of group home residents and the community as a whole, including such special requirements as are reasonably necessary for the regulation of group homes proposing to house individuals required to register as sex offenders pursuant to Section 18-3-412.5, C.R.S. (Ord. 1391 §1(part), 1991; Ord. 1639 §2, 2000)

**Sec. 5-90-80. Operational requirements.**

Any license issued hereunder is subject to revocation by the City Council, as hereinafter provided, for failure to operate the group home in conformance with the following required standards:

- (1) All licensees must follow the required standards of any state or county license.
- (2) All group homes must be operated by the group home administrators who shall be on site or on call twenty-four (24) hours a day.
- (3) Any changes in the information provided in Section 5-90-40(1) through (7) shall be immediately reported in writing to the City Clerk.
- (4) The plan of operation, as amended from time to time and approved by the City Clerk, shall continue to be followed, and any changes thereto shall first be approved by the City Clerk.
- (5) The group home administrators shall immediately notify the Police Department of: (1) any unlawful acts committed on the premises; or (2) any unlawful acts of the residents or staff off-premises which relate to the operation of the group home; or (3) persons who make threatening

communications to others or commit acts dangerous to themselves or others; and (4) incidents, such as fire or structural failure or flooding, dangerous or potentially dangerous to the residents.

(6) Sufficient staffing, supervision and equipment/facilities must be maintained so residents do not become unaccounted for, uncontrolled or lost. It is the responsibility of the licensees and the group home administrator, not the City, to supervise the location or transportation of group home residents. (Ord. 1391 §1(part), 1991; Ord. 1597 §5, 1999)

#### **Sec. 5-90-85. Inspection of premises.**

Licensed premises shall be subject to inspection for good cause, for the purpose of verifying that the operation thereof is in conformance with the requirements of the license and the requirements set forth herein, without notice, at reasonable hours and with reasonable frequency, by City officials within the Building Department, Code Enforcement Department, Police Department and Fire Department. Inspection may occur at any time if exigent circumstances exist. Refusal of inspection requests or interference with inspections shall be cause for license revocation. Annual inspections, with notice, shall occur for license renewal purposes. Notice of nonconformance with any of the licensing requirements listed heretofore in this Article by the licensee shall be forwarded in writing immediately to the City Clerk. (Ord. 1391 §1(part), 1991; Ord. 1597 §6, 1999)

#### **Sec. 5-90-90. License revocation, suspension, violation.**

The license granted hereunder may be revoked by the City Council for failure of any of the licensees or group home administrators to adhere to the requirements and standards set forth herein. Upon recommendation of the City Clerk, the City Manager may commence revocation proceedings by notifying the licensee of alleged violations and of the date of hearing before the City Council. Notice to the licensee shall be by regular mail to the address given in the license application, as amended, at least fifteen (15) days in advance of the City Council hearing. Notice of the hearing shall be published in a local newspaper of general circulation at least five (5) days before the hearing. At the hearing, after presentation of evidence by the City staff and by the applicant, the City Council, by majority vote, may revoke the license, suspend the license or stay revocation or suspension upon specified conditions, upon findings by preponderance of the evidence that the licensee or group home administrators failed in one (1) or more respects to follow the standards and requirements of the license. Revocation or suspension of this license may be appealed pursuant to Rule 106 C.R.C.P. to the Adams County District Court. (Ord. 1391 §1(part), 1991; Ord. 1597 §7, 1999)

### **ARTICLE 5-94**

#### **Sexually Oriented Businesses**

##### **Sec. 5-94-10. Purpose and intent.**

The purpose and intent of this Article is to regulate sexually oriented businesses, to promote the health, safety and general welfare of the citizens of the City and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City, thereby reducing or eliminating the adverse secondary effects from sexually oriented businesses. The provisions of this Article are not intended to impose a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Nor is it the intent of this Article to restrict or deny access by adults to constitutionally protected materials or to deny access

by distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent or effect of this Article to condone or legitimize the distribution of obscene material. (Ord. 1550 §1(part), 1998; Ord. 1589, 1999)

#### **Sec. 5-94-20. Definitions.**

For the purposes of this Article, the words set out in this Section shall have the following meanings:

(1) *Adult arcade* means an establishment where as the principal business purpose, for any form of consideration, one (1) or more still or motion picture projectors, slide projectors or similar machines, or other image-producing machines, for viewing by five (5) or fewer persons each, are used to show films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

(2) *Adult bookstore* means:

a. A commercial establishment which: (i) devotes twenty-five percent (25%) of its stock-in-trade or interior floor space to; (ii) receives twenty-five percent (25%) of its revenues from; or (iii) devotes twenty-five percent (25%) of its advertising expenditures to; the promotion of the sale, rental or viewing, for any form of consideration, of books, magazines, periodicals or other printed matter, or photographs, slides, videos, CDs or other visual representations which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

b. An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing specified sexual activities or specified anatomical areas, and still be categorized as an *adult bookstore*. Such other business purposes will not serve to exempt such establishment from being categorized as an *adult bookstore* so long as the provisions of Subsection (2)a hereof are otherwise met.

(3) *Adult cabaret* means a nightclub, bar, restaurant or similar commercial establishment, whether or not alcoholic beverages are served, which features: a) persons who appear nude or in a state of nudity or seminude; b) live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or c) films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

(4) *Adult motel* means a motel, hotel or similar commercial establishment which:

a. Offers public accommodations for any form of consideration, and provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides or other photographic reproductions which can be described as depicting specified sexual activities or specified anatomical areas and which advertises the availability of this sexually oriented material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising, including but not limited to newspapers, magazines, pamphlets, leaflets, radio or television;

b. Offers a sleeping room for rent for a period of time less than ten (10) hours; or

c. Allows a tenant or occupant to sub-rent a sleeping room for a time period of less than ten (10) hours.

(5) *Adult motion picture theater* means a commercial establishment where films, motion pictures, videocassettes, slides or similar photographic reproductions depicting or describing specified sexual activities or specified anatomical areas are regularly shown for any form of consideration to six (6) or more persons.

(6) *Adult novelty business* means a commercial establishment which devotes any of its stock-in-trade or interior floor space to, receives any of its revenues from, or devotes any of its advertising expenditures to the promotion of the sale of devices which are designed and marketed for the stimulation of human genitals. Other business purposes will not serve to exempt such establishment from being categorized as an *adult novelty business*.

(7) *Adult theater* means a theater, concert hall, auditorium or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by exposure of specified anatomical areas or by specified sexual activities.

(8) *Adult video store* means:

a. A commercial establishment which: (i) devotes twenty-five percent (25%) of its stock-in-trade or interior floor space to; (ii) receives twenty-five percent (25%) of its revenues from; or (iii) devotes twenty-five percent (25%) of its advertising expenditures to; the promotion of the sale, rental or viewing, for any form of consideration, of photographs, slides, videos, CDs or other visual representations which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

b. An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing specified sexual activities or specified anatomical areas, and still be categorized as an *adult video store*. Such other business purposes will not serve to exempt such establishment from being categorized as an *adult video store* so long as the provisions of Subsection (8)a hereof are otherwise met.

(9) *Employee* means a person who works or performs in and/or for a sexually oriented business, regardless of whether or not the person is paid a salary, wage or other compensation. The term *employee* includes but is not limited to the manager.

(10) *Escort* means a person who, for any form of consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(11) *Escort agency* means a person who furnishes, offers to furnish or advertises to furnish *escorts* as part of its business purposes for a fee, tip or any form of consideration.

(12) *Establishment* (sexually oriented business) means:

- a. The opening or commencement of a sexually oriented business as a new business;
- b. The conversion of an existing business into a sexually oriented business;



c. The addition of a sexually oriented business to any other existing sexually oriented business; or

d. The relocation of a sexually oriented business.

(13) *License* means a sexually oriented business license applied for or issued pursuant to Section 5-94-60 of this Article.

(14) *Licensee* means a person in whose name a license to operate a sexually oriented business has been issued and who shall be an owner or principal owner of the business.

(15) *Manager* means an employee, other than a licensee, who is responsible for the operation and management of a sexually oriented business.

(16) *Nude model studio* means a sexually oriented business in which, for any form of consideration, a person appears in a state of nudity or displays specified anatomical areas to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by another person.

(17) *Nudity* or *state of nudity* means:

a. The appearance of a human bare buttocks, anus, genitals or the areola or nipple of the female breast; or

b. A state of dress which fails to opaquely and fully cover a human buttocks, anus, genitals or areola or nipple of the female breast.

(18) *Owner* means a person owning, directly or beneficially, any interest or part interest, however identified, in a sexually oriented business. The term *owner* shall not include corporate stockholders unless such stockholders are also officers, directors or employees who have direct management responsibilities.

(19) *Peep booth* means a room of less than one hundred fifty (150) square feet of floor space in which viewing of sexually oriented materials and/or acts is to occur.

(20) *Person* means an individual, sole proprietorship, partnership (in any form), corporation, limited liability company, association, organization or other legal entity, including an applicant, licensee, manager, owner or principal owner.

(21) *Premises* or *licensed premises* means any premises that requires a license and that is classified as a sexually oriented business, including parking lots, sidewalks and other areas under the direction and control of the licensee.

(22) *Principal owner* means any person owning, directly or beneficially, ten percent (10%) or more of a corporation's corporate stock, ten percent (10%) or more of a membership interest in a limited liability company, ten percent (10%) or more of the ownership interest in the entity or the general partner of a limited partnership, regardless of the percentage of ownership.

(23) *Private room* means a room in an adult motel that is not a peep booth, that has a bed and a bath in the room or adjacent room, and that is capable of being used for lodging.

(24) *Public park* means public land which has been designated for park or recreational activities including but not limited to a park, playground, nature trail, swimming pool, reservoir, athletic field, basketball or tennis court, pedestrian bicycle path, open space, wilderness area or similar public land within the City which is under the control, operation or management of the City or other public entity.

(25) *Religious institution* means any church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities.

(26) *School* means any public or private educational facility, including but not limited to child day care facilities, nursery schools, preschools, kindergarten, elementary schools, primary schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, special education schools, junior colleges and universities. The term *school* includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school.

(27) *Seminude* means a state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

(28) *Sexual encounter establishment* means a business or commercial establishment that, as one (1) of its primary business purposes, offers, for any form of consideration, a place where two (2) or more persons may congregate, associate or consort for the purpose of specified sexual activities or the exposure of specified anatomical areas or activities when one (1) or more of the persons is in a state of nudity. An *adult motel* will not be classified as a *sexual encounter establishment* by virtue of the fact that it offers private rooms for rent.

(29) *Sexually oriented business* means an adult arcade, adult bookstore, adult cabaret, adult motel, adult motion picture theater, adult novelty business, adult theater, adult video store, sexual encounter establishment, escort agency or nude model studio. The definition of a *sexually oriented business* shall not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the State engages in medically approved and commonly recognized sexual therapy.

(30) *Specified anatomical areas* means human genitals less than completely or opaquely covered, including the pubic region, buttocks or anus; female breasts below a point immediately above the top of the areola; or human male genitals in a discernible turgid state, even if completely or opaquely covered.

(31) *Specified criminal acts* means sexual crimes against children, sexual abuse, rape and/or those included in Article 7 of Title 18, C.R.S., including, but not limited to, the distribution of obscenity, prostitution or pandering.

(32) *Specified sexual activities* means:

a. The fondling or other intentional touching of human genitals, pubic region, buttocks, anus or female breasts.

b. Sex acts, actual or simulated, including intercourse, oral copulation or sodomy.

- c. Masturbation, actual or simulated.
- d. Human genitals in a state of sexual stimulation, arousal or tumescence.
- e. Excretory functions as part of or in connection with any of the activities set forth in Subparagraphs a through d.

(33) *Transfer of ownership or control of a sexually oriented business* means the sale, lease or sublease of the sexually oriented business, the transfer of securities which constitute a controlling interest in such business, whether by sale, exchange or similar means, or the establishment of trust, management arrangement, gift or other similar legal device which transfers ownership or control of such business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control. (Ord. 1550 §1(part), 1998; Ord. 1589, 1999)

#### **Sec. 5-94-30. Exemptions.**

The provisions of this Article regulating nude model studios do not apply to:

- (1) A college, junior college or university supported entirely or partly by taxation; or
- (2) A private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation. (Ord. 1550 §1(part), 1998; Ord. 1589, 1999)

#### **Sec. 5-94-40. Violations and penalties.**

(a) It shall be unlawful for a licensee, owner, principal owner, manager or employee to violate any of the requirements of this Article or to knowingly permit any patron, customer or occupant of the licensed premises to violate the requirements of this Article.

(b) It shall be unlawful for a licensee, owner, principal owner, manager or employee to knowingly operate or cause to be operated a sexually oriented business without a license therefor.

(c) It shall be unlawful for any person to act as a manager of a sexually oriented business without a manager's license therefor.

(d) It shall be unlawful for a licensee, owner, principal owner, manager or employee to knowingly allow or permit the following:

- (1) Operation of licensed premises in violation of any municipal ordinance, state or federal law, or any applicable state or county health department regulation.
- (2) Operation of licensed premises in violation of any of the regulations contained in Section 5-94-50 of this Code.
- (3) Transfer or attempt to transfer a license without complying herewith and obtaining a license therefor as required in this Article.
- (4) Change, alter or modify the licensed premises of a sexually oriented business, or attempt to do so without complying with this Article.

(5) In the case of a corporate licensee, operation of a sexually oriented business when the corporation is suspended or not in good standing with the secretary of state's office where the corporation is incorporated, or is authorized to do business.

(e) It shall be unlawful for an applicant, owner, principal owner, manager or employee to knowingly:

(1) Make a false statement on an application for a license or fail to disclose facts as required by this Article.

(2) Permit any person on the licensed premises who has not attained the age of eighteen (18) years, except for establishments which offer on-premises viewing of films or videos or have live entertainment, in which case the minimum age requirement shall be twenty-one (21) years.

(3) Permit any employee on the licensed premises who has not attained the age of twenty-one (21) years to participate in live performances or appear in a state of nudity.

(4) Engage in or allow any person to be engaged in any specified sexual activity on the licensed premises.

(f) It shall be unlawful for any person to knowingly:

(1) Enter or remain on the licensed premises when such a person has not attained the age of eighteen (18) years, except for establishments which offer on-premises viewing of films or videos or have live entertainment, in which case the minimum age requirement shall be twenty-one (21) years.

(2) Participate in live performances or appear in a state of nudity when such a person has not attained the age of twenty-one (21) years.

(3) Commit or engage in any specified sexual activity on the licensed premises.

(4) Touch, fondle, caress or come in physical contact with the specified anatomical areas of any performer, entertainer, waitperson or employee of the sexually oriented business.

(g) It is an affirmative defense to prosecution for a violation of this Article that a person in a sexually oriented business exposed any specified anatomical area during such person's bona fide use of a restroom, or in the case of an employee during the employee's bona fide use of a dressing room which is accessible only to employees.

(h) Penalties.

(1) Any violation of Subsections (a), (b), (c) and (d) of this Section shall be punishable by a fine in a minimum amount of two hundred fifty dollars (\$250.00) and a maximum amount of one thousand dollars (\$1,000.00), plus all applicable court costs.

(2) Any violation of Subsections (e) or (f) of this Section shall be punishable by a maximum penalty.

(3) Each day a violation occurs shall be considered a separate and distinct offense. (Ord. 1550 §1(part), 1998; Ord. 1589, 1999)

**Sec. 5-94-50. Regulations for operation.**

(a) Inspection of the premises. An applicant, licensee, owner, principal owner or manager shall permit representatives of the Building Inspection Division, the Tri-County Health Department, the Fire Department or the Police Department to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is open for business or occupied by any person.

(b) Exhibition of sexually explicit films or videos in peep booths. A licensee, owner, principal owner or manager who operates or causes to be operated a sexually oriented business which exhibits, on the licensed premises, a film, videocassette or other video reproduction in a peep booth, which depicts specified sexual activities or specified anatomical areas, shall comply with the following:

(1) The business shall have one (1) or more manager's stations. No alteration in the configuration or location of a manager's station may be made without the prior written approval from the City's Chief Building Official.

(2) At least one (1) employee must be on duty and situated at a manager's station at all times that any customer or patron is present inside the licensed premises.

(3) The interior of the licensed premises shall be configured in such a way that there is an unobstructed view from a manager's station of every area to which any customer or patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video display equipment. If the licensed premises has two (2) or more manager's stations designated, the interior of the sexually oriented business premises shall be configured in such a manner that there is an unobstructed view of each area to which any customer or patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required must be by direct line of sight from the manager's station. The view area shall remain unobstructed by any doors, walls, merchandise, display racks or other materials at all times, and no customer or patron shall be permitted access to any area which has been designated in the application as an area in which customers and patrons will not be permitted.

(4) No peep booth may be occupied by more than one (1) person at any one (1) time.

(5) No door shall be placed on any peep booth, and no holes or openings shall be placed or allowed to remain in the wall between any two (2) adjacent peep booths.

(c) Hours of operation.

(1) A sexually oriented business shall not be open for business nor shall the licensee, owner, principal owner, manager or any employee allow customers or patrons upon the licensed premises:

a. On any Monday through Saturday from 2:00 a.m. to 7:00 a.m.

b. On any Sunday, from 10:00 p.m. to 12:00 p.m. (noon), except if any Sunday falls on December 31, then the hours shall be as stated in Subparagraph (c)(1)a above.

(2) This Section does not apply to those areas of an adult motel which have private rooms.

(d) Minimum age. The licensee, owner, principal owner, manager or any employee of the licensee shall not allow or permit anyone under the age of eighteen (18) years to be in or upon a licensed

premises, except for establishments which offer on-premises viewing of films or videos or have live entertainment, in which case the age requirement shall be twenty-one (21) years. The licensee, owner, principal owner or manager of the licensee shall not allow or permit any employee under the age of twenty-one (21) years to participate in live performances or appear in a state of nudity.

(e) Lighting regulations.

(1) Excluding a private room of an adult motel, the interior portion of the premises of a sexually oriented business to which patrons are permitted access must be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place, including peep booths, at an illumination of not less than five (5) foot-candles as measured at floor level.

(2) It shall be the duty of the licensee and employees present on the premises to ensure that the illumination described in Subsection (a) of this Section is maintained on at all times that any patron or customer is present on the premises.

(f) Adult theaters and adult cabarets. Any adult cabaret or adult theater shall have one (1) or more separate areas designated as a stage in a diagram submitted as part of the application submitted with the City Clerk. Entertainers shall perform only upon the stage. The stage shall be fixed and immovable. Except for current legal, nonconforming businesses, no seating for the audience shall be permitted within three (3) feet of the edge of the stage. No members of the audience shall be permitted upon the stage or within three (3) feet of the edge of the stage.

(g) Conduct for sexually oriented businesses.

(1) It shall be unlawful for any licensee, owner, principal owner, manager or employee to mingle with the patrons or serve food or drinks in a state of nudity.

(2) It shall be unlawful for any licensee, owner, principal owner, manager or employee to knowingly encourage or permit any person upon the premises to touch, caress or fondle the breasts or specified anatomical areas of any person.

(3) A licensee, owner, principal owner or manager shall comply, in addition to the regulations contained in this Subsection, with those specific regulations concerning the conduct of liquor licensed premises contained in Article 5-8 of this Code, which Article is incorporated in this Article by this reference. (Ord. 1550 §1(part), 1998; Ord. 1589, 1999)

**Sec. 5-94-60. License.**

(a) No sexually oriented business shall be operated within the corporate limits of the City without a valid sexually oriented business license issued by the City.

(b) It shall be unlawful to operate or cause to be operated a sexually oriented business when the person knows or reasonably should know that the business:

- (1) Does not have a sexually oriented business license;
- (2) Has a license that is under suspension;
- (3) Has a license that has been revoked; or

(4) Has a license that has expired.

(c) A sexually oriented business license shall be requested through the application and licensing process described in this Section. Any person desiring to operate a sexually oriented business shall file with the City Clerk an original and two (2) copies of a fully completed and sworn license application on the standard application form supplied by the City Clerk.

(1) The City Clerk is responsible for granting, denying, revoking, renewing and suspending the licenses for proposed or existing sexually oriented businesses. In the City Clerk's discretion, the City Clerk may, but need not, appoint an employee of the City to act for and on behalf of the City Clerk as to any or all matters related to sexually oriented businesses as specified in this Article.

(2) The Planning Department is responsible for ascertaining whether a proposed sexually oriented business for which a license application has been submitted complies with all locational requirements of Chapter XVII, Section 11, Paragraph J.5 of this Code.

(3) The Police Department is responsible for securing information on whether an applicant has been convicted of a specified criminal act during the time period set forth hereafter.

(4) The Building Inspection Department is responsible for inspecting a proposed sexually oriented business in order to ascertain whether it is in compliance with applicable building codes and ordinances.

(d) Any sexually oriented business operating in the City upon the effective date of the ordinance from which this Article derives, and subject to Article 5-4 of this Code, shall have sixty (60) days to file an application with the City Clerk for a license. During the sixty (60) days and throughout the application process, the business will be allowed to remain open. Once an application has been accepted by the City Clerk, the business will be allowed to remain open until notification that a request for a license has been denied.

(1) A *legal nonconforming business*, as used herein, means any sexually oriented business that was lawfully operated and maintained under the law governing such businesses before its annexation, the adoption of this Article or amendments thereto but does not conform to the provisions of Chapter XVII, Section 11, Paragraph J.5 of this code, relative to zoning districts in which sexually oriented businesses may be located and maintained.

(2) A legal nonconforming business may be continued and shall be operated in accordance with the provisions of this Article, but it shall not be:

a. Altered, modified or expanded;

b. Reestablished after its discontinuance, cessation or change of business for ninety (90) days; or

c. Reestablished after damage or destruction if the estimated cost of reconstruction exceeds fifty percent (50%) of the appraised replacement cost as determined by the City Manager.

(e) The City Clerk shall first determine if the application is complete with all information required by the application form, which shall include the following information and required documents. If the application is complete, it will be accepted:

(1) Identify each such person and each owner and principal owner, member of a limited liability company, officer, director or any person holding ten percent (10%) or more of the corporate stock of a corporation, and all managers, shall be named in the application form, with the individual's legal name and any aliases, date of birth, satisfactory proof of such individual's age, Social Security number, mailing and business address and telephone number. Each person so named shall be photographed and fingerprinted by the Police Department.

(2) For each entity, state its complete name; the date and place of its organization; evidence that it is in good standing under the laws of the state in which it is organized, and if it is organized under the laws of a state other than this State, that it is registered to do business in this State; the names and any aliases, dates of birth, Social Security number, mailing and business address, telephone number and capacity of all officers, directors, managers and principal owners; and the name of the registered agent and the address of the registered office for service of process, if any.

(3) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, the applicant must state said trade name.

(4) Whether the applicant or any other individual listed in Subsections (e)(1) and (2) of this Section has been convicted of a specified criminal act within the times set forth in this Article and, if so, the specified criminal act involved, the date of conviction and the place of conviction.

(5) Whether the applicant or any other individual listed in Subsections (e)(1) and (2) of this Section has had a previous license under this or any other type of sexually oriented business licensing process, law or ordinance from any type of governmental entity anywhere in the United States denied, suspended or revoked and, if so, the name and location of the sexually oriented business for which the license was denied, suspended or revoked, the date of the denial, suspension or revocation and the circumstances that resulted in denial, suspension or revocation.

(6) Whether the applicant or any other individual listed in Subsections (e)(1) and (2) of this Section has been a partner in a partnership or a principal owner of a corporation or legal entity or other recognized entity whose license has previously been denied, suspended or revoked and, if so, the name and location of the sexually oriented business for which the license was denied, suspended or revoked, the date of denial, suspension or revocation and the circumstances that resulted in denial, suspension or revocation.

(7) Whether the applicant or any other individual listed in Subsections (e)(1) and (2) of this Section holds any other licenses under this division or any other type of sexually oriented business licensing process, law or ordinance from any type of governmental entity anywhere in the United States, and if so, the name and location of such other permitted business.

(8) The location of the proposed or existing sexually oriented business, including a legal description of the property, street address and telephone number.

(9) Proof of ownership or the applicant's right to possession of the property. If the property is not owned by the applicant, evidence that the owner of the property is aware of and agrees to the operation of the sexually oriented business.

(10) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business, and showing all interior walls and rooms. The sketch or



diagram does not need to be professionally prepared, but it must be oriented to the north or to some designated street or object and shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

(11) A current certificate and straight-line drawing prepared by a state-registered land surveyor within thirty (30) days prior to an initial application depicting the property lines and the structures containing the proposed licensed premises and any established existing uses regulated by this Section which are located within five hundred (500) feet of the property to be certified; and the property lines of any religious institution, school, public park, public building or residentially zoned property. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

(12) If a person who wishes to operate a sexually oriented business is an individual, such person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each owner and principal owner of the business must sign the application for a license as applicant.

(f) An applicant shall have a continuing duty to promptly supplement application information required by this Section in the event that the information changes in any material way from what is stated on the application. The failure to comply with such continuing duty within thirty (30) days from the date of such change shall be grounds for denial or suspension of a license.

(g) In the event that the City Clerk determines or learns at any time that the applicant has improperly completed the application for an existing or proposed sexually oriented business, the City Clerk shall promptly notify the applicant of such fact and allow the applicant to properly complete the application. The failure to complete the application within ten (10) days of notification shall be grounds for denial or suspension of a license.

(h) The sexually oriented business license shall expire on the anniversary date of approval of the license, and the application process described in this Section shall be repeated for each year that a licensee wishes to renew a license.

(i) The applicant shall pay a nonrefundable application fee, the amount of which shall be as established in the City's annual fee resolution, at the time of filing an application under this Section and at the time of filing of each annual renewal application.

(j) The fact that a person possesses other types of state or City licenses does not exempt such person from the requirement for obtaining a license issued pursuant to this Article. (Ord. 1550 §1(part), 1998; Ord. 1589, 1999)

#### **Sec. 5-94-70. Investigation.**

Upon a determination by the City Clerk that the application is complete and payment of the nonrefundable application fee as required, the City Clerk shall note on the application the date of such determination and acceptance of the application. Thereafter, the City Clerk shall send photocopies of the application to the Planning Department, Police Department, Building Inspection Division and any other affected department or agency. Each department or agency shall promptly conduct an investigation of the applicant, application and the proposed sexually oriented business in accordance with its responsibilities. The investigation shall be completed within forty (40) days of the date on

which the application was accepted by the City Clerk. At the conclusion of its investigation, the Police Department shall provide the City Clerk with the information specified in Section 5-94-60(c)(3). At the conclusion of the investigation by other departments or agencies to which the application was submitted, each such department and agency shall submit to the City Clerk in writing its approval or disapproval of the application, date and in the event of disapproval, state the reasons therefor. (Ord. 1550 §1(part), 1998; Ord. 1589, 1999)

**Sec. 5-94-80. Issuance.**

(a) Time limit for determination, decision. The City Clerk shall either issue a license or deny a request for issuance of a license within sixty (60) days from the date the application is accepted by the City Clerk. Upon the expiration of the sixtieth day, the applicant shall be permitted to begin operating the business for which the license is sought, unless and until the City Clerk notifies the applicant of a denial of the application or license and states the reason for that denial. In the event that the City Clerk denies a request for issuance of a license, after having received and compiled information concerning the proposed business from all relevant sources, the City Clerk shall make written findings of fact stating the reasons for the denial and will so notify the applicant within five (5) days of such decision. A copy of the City Clerk's approval or denial shall be mailed by regular mail, postage prepaid, or in the City Clerk's discretion, served on the applicant at the address shown in the application.

(b) Issuance.

(1) The City Clerk shall issue a license unless one (1) or more of the criteria set forth in Subsection (c)(1) of this Section is present.

(2) The license, when issued, shall identify the licensee on its face, the expiration date and the address of the sexually oriented business. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business. A license issued pursuant to this Section shall be transferable only pursuant to Section 5-94-110.

(c) Denial.

(1) The City Clerk shall deny a request for issuance of a license for any of the following reasons:

a. An applicant is under twenty-one (21) years of age;

b. In the case of renewal, if the applicant is overdue in payment to the City of taxes, fees, fines or penalties assessed or imposed upon the licensee and/or the sexually oriented business;

c. An applicant has failed to provide any information required by this Article for the issuance of the license or has falsely answered a question on the application form or request for information;

d. The premises to be used for the sexually oriented business have been disapproved by an inspecting agency on the grounds that the proposed sexually oriented business is in violation of any standard, regulation, law or ordinance adopted or administered by such agency;

e. The application and/or license fees have not been paid;

f. An applicant is found to be in violation of, or is not in compliance with, any relevant statutes, codes, ordinances, regulations or other laws in effect in the City;

g. The granting of the application would violate a statute, ordinance or court order;

h. The applicant held a license issued under this Article which had been suspended or revoked within the previous twelve (12) months;

i. The applicant has been convicted of a specified criminal act or acts for which:

1. Less than two (2) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense;

2. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense; or

3. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the convictions are of two (2) or more misdemeanors.

The fact that a conviction is being appealed shall have no effect on disqualification of the applicant. An applicant who has been convicted of a specified criminal act may qualify for a license only when the time period required in this Subsection has elapsed;

j. The corporation for which a license has been issued or requested is not in good standing as required by the secretary of state of the state in which the corporation is incorporated;

k. If an applicant held a license issued under this Article or any other similar sexually oriented business ordinance from another city or county denied, suspended or revoked for cause within five (5) years of the date of the application; or

1. An applicant for the proposed business is in violation of or is not in compliance with any of the provisions of this Article.

2. An applicant shall be entitled to a hearing on a decision to deny before the City Council. A written request for such a hearing shall be made to the City Manager within thirty (30) days of the date of the City Clerk's decision to deny a request for issuance of a license. This hearing shall follow all the relevant procedures set forth for a suspension or revocation of a license contained in Section 5-94-170.

3. If, at the hearing before the City Council, the City Council determines that the applicant is ineligible for a license pursuant to Subsection (c)(1) of this Section, the City Council shall issue an order affirming the City Clerk's denial, within thirty (30) days after the date the hearing is concluded, based on the findings of fact advanced at the hearing. A copy of the order shall be mailed by regular mail, postage prepaid, or as may be directed by the City Council, served on the applicant at the address shown in the application.

4. The order of the City Council made pursuant to Subsection (c)(3) of this Section shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). Failure of an applicant to timely appeal the City Council's decision constitutes a waiver by the applicant of any right to contest the decision.

5. Notwithstanding any other time periods set forth in this Article, no license shall be issued by the City Clerk until the building in which the business is to be housed is ready for occupancy with such furniture, fixtures and equipment in place as necessary to comply with the provisions of this Article, as well as any other requirements determined by the Building Inspection Division, and then only after inspection of the premises has been made by the Building Inspection Division to determine that the applicant has complied with the plans and specifications submitted upon application. The City Clerk, at the City Clerk's discretion, may revoke, suspend or elect not to issue or renew the license if within three hundred sixty-five (365) days after approval of the request for issuance of the license the sexually oriented business has not begun operations of construction, renovation or improvement of the building.

(d) Notification. Unless the City Clerk or City Council shall direct otherwise, notification under this Article shall mean a mailing to the licensee by regular mail, postage prepaid, at the address listed on the license application, and the effective date for the notice shall be counted from the date of such mailing. Any notification made or required of the applicant, licensee or other private party under this Article shall be considered received by the City within the time periods specified. (Ord. 1550 §1(part), 1998; Ord. 1589, 1999)

**Sec. 5-94-90. Annual license fees.**

The annual license fees for all licenses required under this Article, including manager's license and renewals thereof, shall be as established by the City Council in its annual fee resolution. (Ord. 1550 §1(part), 1998; Ord. 1589, 1999)

**Sec. 5-94-100. Expiration and renewal.**

(a) Each license required under this Article shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 5-94-60. Application for renewal of a license shall be made at least sixty (60) days before the expiration date of the license. If a renewal application is submitted less than sixty (60) days before the expiration date of the license, the expiration date of the license will not be continued and the applicant/licensee will be accepting the risk that the request for a renewal of the license may not be completed in time to ensure continuous operation of the business. An expired license is invalid.

(b) The City Clerk may deny a request for renewal on the same grounds as stated in Section 5-94-80(c)(1). (Ord. 1550 §1(part), 1998; Ord. 1589, 1999)

**Sec. 5-94-110. Transfer.**

(a) It shall be unlawful for a licensee, owner, principal owner or manager to operate a sexually oriented business under the authority of a license issued pursuant to this Article at any address other than the address designated in the application for license.

(b) A licensee shall not transfer a license issued under this Article either directly or indirectly to any person unless and until such person:

(1) Files the equivalent of a new application with the City Clerk, and a new license is issued pursuant to this Article; and

- (2) Pays a transfer fee equal to twenty percent (20%) of the annual license fee.
- (c) No license may be transferred after such time as the City Clerk has notified the licensee that suspension or revocation proceedings have been or will be brought against the licensee.
- (d) A license cannot be transferred to a different location.
- (e) A license issued pursuant to this Article shall be deemed to have been revoked from and after any attempt to transfer the license either directly or indirectly in violation of this Section. (Ord. 1550 §1(part), 1998; Ord. 1589, 1999)

**Sec. 5-94-120. Changing, altering or modifying licensed premises.**

(a) After the issuance of a license under this Article, the licensee shall make no physical change, alteration or modification of the licensed premises which materially or substantially alters the licensed premises or the usage of the licensed premises from the plans and specifications submitted at the time of obtaining the original license. If the licensee wishes to make physical changes, alterations or modifications, the licensee shall apply for a new license under the application provisions in Section 5-94-60.

(b) For purposes of this Section, physical changes, alterations or modifications of the licensed premises or the usage of the licensed premises requiring prior written consent shall include but not be limited to the following:

- (1) Any increase or decrease in the total size or capacity of the licensed premises.
- (2) The sealing off, creation of or relocation of a common entryway, doorway, passage or other such means of public ingress and/or egress, when such common entryway, doorway or passage permits access to the licensed premises from or between public streets or thoroughfares, adjacent or abutting buildings, rooms or premises.
- (3) Any change, alteration or modification to a peep booth which would result in increasing the size of the peep booth to more than one hundred fifty (150) square feet of floor space.
- (4) Any change, alteration or modification of the manager's station for sexually oriented businesses which exhibit sexually explicit films or videos in peep booths.
- (5) Any material change in the interior of the licensed premises that would alter or affect the physical structure that existed in the floor plan approved with the current existing license.
- (6) The following shall not constitute a retinal change in the interior of the licensed premises: the installation or replacement of electric fixtures or equipment, plumbing, refrigeration, air conditioning or heating fixtures and equipment; the lowering of ceilings; the installation and replacement of floor coverings; the replacement of furniture and equipment; and other similar changes. (Ord. 1550 §1(part), 1998; Ord. 1589, 1999)

**Sec. 5-94-130. Manager's license.**

(a) If a sexually oriented business desires to employ a manager, such business must have a manager licensed pursuant to this Section, except an owner may act as a manager, in which case such owner or principal owner need not have a manager's license.

(b) Any manager of a sexually oriented business shall submit an application for a manager's license on a form to be provided by the City Clerk. The application shall contain the applicant's name and any aliases, residential address, date of birth, Social Security number, phone number and the information required in Section 5-94-60(e)(4), (5), (6) and (7).

(c) The Police Department is responsible for securing information on whether an applicant has been convicted of a specified criminal act during the time period set forth in Section 5-94-80(c)(1)i.

(d) Upon a determination by the City Clerk that the manager's application is complete and payment of the nonrefundable application fee as required, the City Clerk shall note on the application the date of such determination and acceptance of the application. Thereafter, the City Clerk shall send photocopies of the application to the Police Department for an investigation of the applicant in accordance with its responsibility.

(e) The City Clerk shall grant the application within twenty (20) days of its filing unless:

(1) The applicant is under age twenty-one (21).

(2) The applicant has failed to provide the information required by this Section or has failed to complete the application.

(3) The license fee for a manager's license has not been paid.

(4) The applicant has been convicted of a specified criminal act within the times set forth in Section 5-94-80(c)(1)i.

(5) The applicant is a manager of a sexually oriented business that is not operating in compliance with any provisions of relevant statutes, codes, ordinances, regulations or other laws in effect in the City.

(6) The applicant held or was the manager of a license issued under this Article or any other similar sexually oriented business ordinance from another city or county denied, suspended or revoked for cause within five (5) years of the date of the application.

(f) Nothing herein shall be deemed a requirement that a sexually oriented business must have a manager separate and distinct from an owner or principal owner.

(g) A manager's license shall be valid as long as the manager is employed in that capacity. Each new manager for a business shall have a manager's license issued pursuant to this Section.

(h) A manager's license may be suspended or revoked in accordance with the procedures set forth in Sections 5-94-140 through 170 below. (Ord. 1550 §1(part), 1998; Ord. 1589, 1999)

**Sec. 5-94-140. Suspension.**

(a) The City Clerk shall suspend a license issued under this Article if the City Clerk finds that:

(1) A licensee, owner, principal owner or manager has:

a. Violated or is not in compliance with any section of this Article, including the regulations provided for in Section 5-94-50, or has been convicted of or pled guilty or nolo contendere to the prohibitions contained in Section 5-94-40 or any specified criminal acts;

b. Been found to have operated or been operating the sexually oriented business in violation of a building, fire, health or zoning ordinance, code, statute or regulation, whether federal, state or local, such determination being based on investigation by the division, department, agency or court charged with enforcing such rules or laws. In the event that such a violation is of a type that can be corrected, the City Clerk shall notify the licensee of the violation and shall allow the licensee a seven-day period in which to correct the violation, after which period the City Clerk shall forthwith suspend the license and shall notify the licensee of the suspension;

c. Engaged in a license transfer contrary to Section 5-94-110. In the event that the City Clerk suspends a license on the ground that a licensee engaged in a license transfer contrary to Section 5-94-110, the City Clerk shall forthwith notify the licensee of the suspension. The suspension shall remain in effect until the procedure for transfer as set forth in Section 5-94-110 has been completed;

d. Failed to comply with the continuing duty of the applicant or licensee to supplement an application requesting issuance of a license pursuant to Section 5-94-60(f); or

e. Operated the sexually oriented business when the corporation in whose name the license is held is no longer in good standing according to the secretary of state of the state under which the corporation is incorporated.

(2) An employee of the licensee has been convicted of or pled guilty or nolo contendere to:

a. Any specified criminal acts; or

b. The prohibitions contained in Section 5-94-40(d).

(b) In the event that the City Clerk determines a license should be suspended, after having received information demonstrating or evidencing violation of this Article, the City Clerk shall make written findings of fact stating the reasons for the suspension and will notify the licensee within five (5) days of such decision. All license suspensions under this Section shall be for a period of thirty (30) days. The thirty (30) days shall commence eleven (11) calendar days from the date the City Clerk notifies the licensee of the grounds for suspension. In the event that the violation of the statute, law, ordinance or regulation in question has not been corrected within the thirty-day suspension period, the suspension will continue until the violation has been corrected, as verified by the City Clerk. If the violation has not been corrected within six (6) months, the City Clerk shall have the authority to revoke the license according to the procedures set forth in Section 5-94-160.

(c) A licensee shall be entitled to a hearing before the City Council if the City Clerk seeks to suspend a license under this Section. The licensee shall have ten (10) days after the licensee has

received notification of the City Clerk's decision to suspend the license to request in writing a hearing before the City Council. Upon receipt of such a request by the City Clerk, the City Council shall schedule a hearing within fourteen (14) days of receipt of the request and notify the licensee of the date and time of the hearing. The hearing shall follow all relevant procedures set forth in Section 5-94-170. (Ord. 1550 §1(part), 1998; Ord. 1589, 1999)

**Sec. 5-94-150. Summary suspension.**

(a) At such time as the City Clerk has reasonable grounds to believe and finds that a licensee under this Article has been guilty of a willful violation of any applicable law, ordinance, rule or regulation and, as a result, there exists an imminent threat to the public health, safety or welfare which requires emergency action, the City Clerk may temporarily and summarily suspend the license pending a request for proceedings by the licensee.

(b) The temporary suspension of a license without notice pending hearing shall not exceed fifteen (15) days. The licensee may request in writing a hearing as provided in Section 5-94-140(c). If the licensee does not request a hearing within the fifteen (15) days, the license shall remain suspended for an additional fifteen (15) days or until the reason for the summary suspension and imminent threat to the public health, safety or welfare has been eliminated. If the reason for the summary suspension has not been corrected within six (6) months, the City Clerk shall revoke the license in accordance with the procedures set forth in Section 5-94-160. (Ord. 1550 §1(part), 1998; Ord. 1589, 1999)

**Sec. 5-94-160. Revocation.**

(a) Subject to the appeal provisions provided in this Section, the City Clerk shall revoke a license issued under this Article upon determining that:

(1) A cause for suspension as set forth in Section 5-94-140 occurred and the license had previously been suspended within the preceding twelve (12) months;

(2) A license has been suspended under Section 5-94-140 and the licensee has failed to correct the violation for which the license was suspended within six (6) months;

(3) A licensee, owner, principal owner or manager gave false or misleading information in the material submitted during the application process;

(4) A licensee, owner, principal owner, manager or employee has knowingly allowed possession, use or sale of controlled substances, as defined in Section 12-22-301, C.R.S., et seq., to occur on the licensed premises of a sexually oriented business;

(5) A licensee, owner, principal owner, manager or employee has knowingly allowed prostitution to occur on the licensed premises of a sexually oriented business;

(6) A licensee, owner, principal owner, manager or employee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;

(7) A licensee, owner, principal owner or manager has been convicted of a specified criminal act for which the time period set forth in Section 5-94-80(c)(1)i has not elapsed;



(8) On two (2) or more occasions within a twelve-month period, a person committed an act or action which occurred in or on the premises, which act or actions constituted a specified criminal act for which a conviction has been obtained or a plea of guilty or nolo contendere had been entered, and the person was an employee of the sexually oriented business at the time the act was committed. The fact that conviction is being appealed shall have no effect on the revocation of the license;

(9) A licensee, owner, principal owner, manager or an employee is delinquent in payment to the City or State for any taxes, fees or other financial obligations;

(10) A licensee, owner, principal owner, manager or employee has knowingly allowed any specified sexual activity to occur in or on the sexually oriented business premises;

(11) A licensee, owner, principal owner, manager or employee has knowingly allowed any activity, conduct or sale of material that has been found by a court of law to be obscene under Article 9-20 of this Code; or

(12) The licensee, owner, principal owner, manager or an employee has operated more than one (1) sexually oriented business within the same building structure or portion thereof.

(b) In the event that the City Clerk determines that a license should be revoked, after having received information demonstrating or evidencing a violation of this Article, the City Clerk shall make written findings of fact stating the reasons for the revocation and will notify the licensee within five (5) days of such decision.

(c) A licensee shall be entitled to a hearing before the City Council if the City Clerk seeks to revoke a license under this Section. The licensee shall have ten (10) days after the licensee has received notification of the City Clerk's decision to suspend the license to request a hearing before the City Council. If the City Clerk receives no request for a hearing within ten (10) days of notification, the decision to revoke a license shall be final. Upon receipt of such a request from the licensee by the City Clerk, the City Council shall schedule such hearing within fourteen (14) days of receipt of the request and notify the licensee of the date and time of the hearing. The hearing shall follow all the relevant procedures set forth in Section 5-94-170.

(d) When a sexually oriented business license has been revoked, the revocation shall be effective for a period of two (2) years. A licensee, owner or principal owner of a sexually oriented business who has had a license revoked shall be ineligible to apply for a license for two (2) years from the effective date of the revocation. (Ord. 1550 §1(part), 1998; Ord. 1589, 1999)

#### **Sec. 5-94-170. Hearing procedure.**

(a) A licensee shall be entitled to a hearing before the City Council if the City Clerk seeks to deny, suspend or revoke a license issued pursuant to this Article for reasons stated in this Article, pursuant to the following procedure:

(1) The City Council shall determine whether the City Clerk's proposed action comports with the requirements and standards of this Article and applicable provisions of all ordinances, statutes, codes and regulations applicable to the sexually oriented business license. The City Council may receive all or part of the evidence in written form if the interests of the parties will not be prejudiced substantially and if the hearing will be expedited thereby. The rules of evidence and requirements of proof and procedure shall conform to the extent practicable to ascertain facts affecting the

substantial rights of the City and the licensee. The City Council may receive and consider evidence not admissible under such rules if such evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. In the absence of objection, the hearing may be conducted informally, and failure to request any procedure shall constitute a waiver thereof.

(2) All testimony by witnesses must be sworn testimony; the Mayor shall swear in all witnesses. The burden of proof is on the City to show that a violation of any statute, law, ordinance or regulation occurred or that actions constituting grounds for denial, suspension or revocation occurred by a preponderance of the evidence.

(3) If the City Council determines that such a violation occurred or that any grounds exist for denial, suspension or revocation, the City Council shall issue an order either reaffirming the City Clerk's findings or an order denying, suspending or revoking the license. The order shall be in writing with findings of fact and conclusions of law, setting forth the grounds for the decision, based on the evidence presented at the hearing. The order shall be prepared within thirty (30) calendar days after the hearing is concluded. A copy of the order shall be mailed by regular mail, postage prepaid, to the licensee or owner at the address shown on the license or, if so ordered by the City Council, served on the licensee or owner at the address shown on the license.

(4) The order of the City Council made pursuant to this Section shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). Failure of a licensee, owner or principal owner to timely appeal the order constitutes a waiver by the licensee, owner or principal owner of any right that may otherwise be available to contest the denial, suspension or revocation of the license.

(5) The City Council shall have the power to administer oaths, issue subpoenas and, when necessary, grant continuances. Subpoenas may be issued to require the presence of persons and/or the production of papers, books, records or other documents necessary for a fair determination of any issue presented at the hearing. A subpoena shall be served in the same manner as a subpoena issued by the District Court of the State. Upon failure of any witness to comply with such subpoena, the City Attorney shall:

a. Petition any Judge of the Municipal Court, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, that the Court, after hearing evidence in support of or contrary to the petition, enter its order compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of willful failure to comply with such order of Court; or

b. Petition the District Court setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, that the Court, after hearing evidence in support of or contrary to the petition, enter its order as in other civil actions, compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of willful failure to comply with such order of the Court.

(b) In any such proceedings, the City Attorney may act on behalf of the City during the hearing. The licensee, owner or principal owner may be represented by counsel.

(c) All hearings held before the City Council regarding suspension or revocation of a license issued under this Article shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall post a deposit in the amount required by the City Clerk and shall pay all costs of preparing such record.

(d) In the event of a denial, suspension or revocation of a license, or a cessation of business for any reason, no portion of the license fee shall be refunded.

(e) When the City Council affirms a decision by the City Clerk to deny, suspend or revoke, pursuant to the applicable subsections of this Section, the denial, suspension or revocation shall be for the same time period and upon the same conditions as specified by that subsection. (Ord. 1550 §1(part), 1998; Ord. 1589, 1999)